157-286

157-286

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 815.

WILLIAM H. COCHRAN AND ROBERT H. SAYRE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 8, 1894.

(15,699.)

(15,699.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 815.

WILLIAM H. COCHRAN AND ROBERT H. SAYRE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

INDEX.

	Original.	Print.
Caption	1	1
Order for bench warrant and fixing amount of bail (No. 959)	1	1
Indictment for making false reports (No. 959)	2	1
Bench warrant (No. 959)	31	15
Arraignment and plea (No. 959)	33	16
Order sustaining motion to quash as to counts 10, 11, and 12, and overruling motion as to the other counts (No. 959)	34	17
Order that defendants renew bail (No. 959)	35	17
Order for bench warrant (No. 960)	36	18
Indictment for aiding and abetting the making of false reports (No. 960)	37	18
Arraignment and plea (No. 960)	69	33
Order sustaining motion to quash as to counts 10, 11, and 12, and overruling motion as to the other counts (No. 960)	70	34
Order of consolidation of causes (Nos. 959 and 960)	71	35
Order for bench warrant (No. 992)	72	35
Indictment for aiding the making of false reports (No. 992)	73	35
Arraignment and plea (No. 992)	106	51
Motion to quash (No. 959)	107	52

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1894.

	Original.	Print.
Order sustaining motion to quash as to counts 10, 11, and 12, and overruling motion as to the other counts (No. 992)	109	53
Order consolidating No. 992 with No. 959	110	53
Order commencing trial	111	54
Order concluding trial; verdict	112	54
Motion for new trial	114	55
Motion in arrest of judgment	119	57
Order overruling motions for new trial and in arrest of judgment	122	58
Judgment and sentence (Cochran)	123	59
Judgment and sentence (Sayre)	124	60
Order granting time to file bill of exceptions and fixing amount of bail bond	126	60
Bill of exceptions	127	61
Testimony of Charles W. Thomas	127	61
Exhibit A—Report of condition of First National Bank of Del Norte, September 30, 1892	137	66
Testimony of William Logan	144	69
Exhibit E—Letter of Cochran to Donald, Dec. 14, 1891	147	71
G—Letter of Cochran to Woodward, Dec. 28, 1891	149	72
F—Letter of Cochran to Hanover bank, April 11, 1892	150	72
D—Letter of Sayre to Donald, August 19, 1892	150	73
Testimony of J. H. Abry	151	73
Testimony of J. B. Lazear	155	75
Exhibit C—Note of Sayre and Clark, August 21, 1892	161	78
Testimony of Robert H. Sayre	162	79
Testimony of William H. Cochran	176	86
Charge to jury	189	92
Defendants' exceptions to charge	201	98
Defendants' requests to charge	203	99
Verdict	207	102
Motion for new trial	207	102
Judge's certificate to bill of exceptions	212	105
Stipulation as to supplemental bill of exceptions	213	105
Supplemental bill of exceptions	213	105
Motion to quash	214	106
Motion in arrest of judgment	215	107
Judge's certificate to bill of exceptions	217	108
Assignment of errors	218	108
Petition for writ of error	231	116
Order allowing writ of error, &c.	232	116
Bond of Sayre	234	117
Bond of Cochran	236	118
Clerk's certificate	238	118
Citation	239	119
Proof of service of citation	240	119
Writ of error	241	120
Return on writ of error	242	120

1 Pleas in the District Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered that heretofore and on, to wit, the 22nd day of November, A. D. 1893, the same being one of the regular juridical days of the November term, A. D. 1893, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court, to wit:

In the Matter of THE GRAND JURY.

At this day come the members of the grand jury, heretofore duly empanelled and sworn as such jurors, and present to the court here the following true bills of indictment, to wit:

* * * * * * *

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE.	959. Indictment for Making False Reports to the Comptroller of the Currency.

(Endorsed:) "A true bill." (Signed) "Henry P. Steele, foreman."

And thereupon it is ordered by the court that a bench warrant issue without delay against the said defendants and returnable forthwith.

And let the said defendants be let to bail in five thousand dollars each.

2 * * * * * * *

And the said indictment is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

At the November term of the district court of the United States of America in and for the district of Colorado, in the year of our Lord one thou and eight hundred and ninety-three, begun and held at the city of Denver, within said district, on the first Tuesday in November, in the year of our Lord one thousand eight hundred and ninety-three:

The grand jurors of the United States within and for the district of Colorado, good and lawful men, duly selected, impaneled, sworn, and charged, on their oath present that William H. Cochran and Robert H. Sayre, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the same William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and

there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and
3 redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said
4 association, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And said debt and liabil-ty of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran and Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such

case made and provided and against their peace and dignity.

5 Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 17th day of May, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the seventeenth day of May, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in words and figures following—that is to say, "19, liabilities other

6 than those above stated, none"—and which entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities in said report."

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said

7 William H. Cochran and Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and

there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Third count. And the grand jurors aforesaid upon their oath aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 12th day of July, A. D. 1892, at said district, the said William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was

8 then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and

9 liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran and Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 9th day of December, 1892, at said district, the said William H. Cochran being then and
10 there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the 9th day of December, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named
11 and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted

and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran and Robert H. Sayre then and there well knew, and that the said false entry was then and there falsely made as aforesaid

12 with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Fifth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the first day of March, A. D. 1892, at said district, the said William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress

13 and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank, at Del Norte, on the State of Colorado, at the close of business on the first day of March, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not

name and set forth all of the debts and liabilities of said association, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promis-
14 sory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran and Robert H. Sayre then and there well knew, and that the false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Sixth count. And the grand jurors aforesaid on their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, in said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there
15 the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

which said entry, so as aforesaid made in said report, then
16 and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry there made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said associa-
17 tion and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Seventh count. And the grand jurors aforesaid on their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 17th of May, 1892, in said district, the said William H Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United

States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the seventeenth day of May, A. D. 1892, made to the Comptroller of the Currency in
18 accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

which said entry, so as aforesaid made in said report, then and purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false
19 in this, that the capital stock of said association was then and there of the sum, to wit, of $50,000, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayer, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eighth count. And the grand jurors aforesaid on their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 12th of July, 1892, in said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association
20 then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 12th day of July, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of loans and discounts in said report; which said entry was then and there in the words and figures following—that is to say:

"*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.			

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans
21 exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made the loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and

that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Mechants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to
22 deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association, contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Ninth count. And the jurors aforesaid on their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the first of March, 1892, in said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the first day of March, 1892, made to the
23 Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
		None.	

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceed-

ing the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section
24 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as they, the said William H. Cochran and Robert H. Sayre, then and there well new, and that the said entry so made as aforesaid, was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and therefore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid, with the felonious intent then and there on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Tenth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and
25 Robert H. Sayre, late of said district, on the 30th day of September, 1892, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of Section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said

entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

26 And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

27 Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eleventh count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the 17th day of May, A. D. 1892, at said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 17th day of May, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of

28 "average reserve and interest" in said report; which said

entry was then and there in the words and figures following, that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false, in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as they, the said William H. Cochan and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false, in this, that the said entry so made as aforesaid did not state the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Twelfth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran and Robert H. Sayre, late of said district, on the twelfth day of July, A. D. 1892, at said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said

entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons, to the grand jurors unknown, a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as they, the said William H. Cochran and Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as they, the said William H. Cochran and Robert H. Sayre, then and
31 there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent on the part of them, the said William H. Cochran and Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association, contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

HENRY V. JOHNSON,
United States District Attorney for Colorado.

(Indorsed:) No. 959. United States district c't, district Colorado. United States *vs.* Wm. H. Cochran *et al.* Making false entry in report to Comptroller of the Currency. R. S., sec. 5209. A true bill. Henry P. Steele, foreman. Filed Nov. 22, 1893. Francis W. Tupper, clerk.

UNITED STATES OF AMERICA, }
District of Colorado. }

The President of the United States of America to the marshal of the district of Colorado, Greeting:

You are hereby commanded that you take the bodies of William H. Cochran and Robert H. Sayre, if they shall be found in your district, and safely them keep, so that you have their bodies
32 before the district court of the United States for the district of Colorado, at the building used as an United States court-house, in the city of Denver, in said district, forthwith, to answer unto the United States of America in a certain bill of indictment preferred against them in said court for making false entries in report to Comptroller of the Currency.

And have you then and there this writ, with due return thereon endorsed.

Witness the Honorable Moses Hallett, judge of the district court of the United States, and the seal thereof, at the city of [SEAL.] Denver, in said district, this 23d day of November, A. D 1893, and of the Independence of the United States the 118th year.

FRANCIS W. TUPPER, *Clerk*,
By CHARLES W. BISHOP, *Deputy Clerk*.

(Indorsed:) Gen. No., 959. District court of the United States for the district of Colorado. The United States of America *vs.* Wm. H. Cochran *et al*. Bench warrant. The defendants may be let to bail before an United States commissioner in the sum of $5,000.00 each, to appear at Denver, Nov. 27, 1893. Francis W. Tupper, clerk. District of Colorado, *ss.*: I have duly served the within writ by taking into custody Wm. H. Cochran & R. H. Sayre and bringing them before com. at Del Norte, Nov. 24th, '93, as I am therein commanded. A. H. Jones, United States marshal, by A. W. Brown, deputy marshal.

33 *Marshal's Fees.*

Service, two *@* 2.00	$4 00
Mileage, 333 *@* .06	19 98
1 day's attendance	2 00
2 discharge	1 00
	$26 98

Filed this 25 day of Nov., A. D. 1893.

F. W. TUPPER, *Clerk*.

17th day, November term.

MONDAY, *November 27th, A. D.* 1893.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh instant.

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE. } 959. Indictment for Making False Reports to the Compt oller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendants, in their own proper persons and by H. F. Richardson, Esq., their attorney, also come.

And thereupon the said defendants are arraigned and this indictment here read to them and they are required to plead thereunto; whereupon the said defendants each for himself and not for the other answers and saith that he is not guilty in manner and form

as in and by this said indictment he stands charged; and of this he puts himself upon the country and the said district attorney doth the like.

34 48th day, November term.

WEDNESDAY, *January 10th, A. D.* 1894.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge, and other officers as noted on the seventh day of November last past.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

UNITED STATES OF AMERICA } 959. Indictment for Making a False
vs. Report to the Comptroller of the
WILLIAM H. COCHRAN *et al.* } Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendants, by E. F. Richardson, Esq., their attorney, also come.

And the motion of the said defendants to quash this said indictment coming on now to be heard is argued by counsel, and, the court being now sufficiently advised in the premises, it seemeth to the court now here that counts number ten, eleven, and twelve of the said indictment are not sufficient in law, and so as to the said counts ten, eleven, and twelve the said motion is sustained; as to all other counts of the said indictments in said motion mentioned the said motion is overruled.

It is therefore considered by the court that the said defendants of and from the premises in counts number ten, eleven, and twelve of the said indictment specified be discharged and go hence hereof without day.

35 74th day.

SATURDAY, *February 10th, A. D.* 1894.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the seventh day of November last past.

UNITED STATES OF AMERICA } 959. Indictment for Making a False
vs. Report to the Comptroller of the
WILLIAM H. COCHRAN *et al.* } Currency.

At this day comes H. V. Johnson, Esq., district attorney, and, on his motion, it is ordered by the court that the said defendants renew their bail for their appearance to answer herein at the next term of court in the sum of five thousand dollars ($5,000.00) each.

13th day.

WEDNESDAY, *November 22d, A. D.* 1893.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh instant.

In the Matter of THE GRAND JURY.

At this day come the members of the grand jury, heretofore duly empannelled and sworn as such jurors, and present to the court here the following true bills of indictment, to wit:

* * * * * * *

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE.	}	960. Indictment for Aiding and Abetting the Making of False Reports to the Comptroller of the Currency.

36 (Endorsed:) "A true bill." (Signed) "Henry P. Steele, foreman."

And thereupon it is ordered by the court that a bench warrant issue without delay against the said defendants and returnable forthwith.

* * * * * * *

37 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

At the November term of the district court of the United States of America in and for the district of Colorado, in the year of our Lord one thousand eight hundred and ninety-three, begun and held at the city of Denver, within said district, on the first Tuesday in November, in the year of our Lord one thousand eight hundred and ninety-three:

The grand jurors of the United States within and for the district of Colorado, good and lawful men, duly selected, impaneled, sworn, and charged, on their oath present that Robert H. Sayre, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, at said district, William H Cochran being then and there president, the said Robert H. Sayre being then and there assistant cashier, of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under

38 said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which

said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promis-
39 sory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said thirtieth day of September, A. D. 1893, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form afore-said—
40 Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Second count. And the grand jurors aforesaid upon their oath aforesaid do further present that Robert H. Sayre, late of said district, on the 17th day of May, in the year of our Lord one thousand eight hundred and ninety-two, at said district, William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking associa-

tion then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the seventeenth day of May, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in
41 words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said Robert H. Sayre then and there well knew, and that the said false entry
42 was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the

form aforesaid, to wit, on said 17th day of May, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 12th day of July, A. D. 1892, at said district, William H. Cochran being then and there president and said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore
43 created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank, at Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none."

And which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth
44 in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth

and included in any manner in said report, as the said Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 12th day of July, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on the 12th day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 9th day of December, 1892, at said district, William H. Cochran being then and there president and said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank, at Del Norte, in the State of Colorado, at the close of business on the 9th day of December, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in

said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert A. Sayre and one A. H.
47 Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said Robert H. Sayre then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 9th day of December, A. D. 1892, in said district, then and there being president of said National Banking Association as aforesaid, and before the said offence as hereinbefore set forth in the form aforesaid, to wit, on said 9th day of December, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

48 Fifth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the first day of March, at said district, William H. Cochran being then and there president and said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank, at Del Norte, in the State of Colorado, at the close of business on the first day of March, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of

"liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none."

And which said entry, so as aforesaid made in said report,
49 then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said Robert H. Sayre, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said Robert H. Sayre then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felo-
50 nious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the first day of March, A. D. 1892, in said district, being then and there president of said National Banking Association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on the said first day of March, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor — the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Sixth count. And the grand jurors aforesaid on their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two, in said district, William H. Cochran being then and there the president and said Robert H. Sayre being then and there the assistant cashier

of a certain national banking association then and there known and designated as the First National Bank of Del Norte,
51 Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte in said district under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the thirtieth day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans
52 exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry there made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to said jurors un-

known, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

53 And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 30th day of September, A. D. 1892, in said district, being then and there president of said National Banking Association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 30th day of September, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Seventh count. And the grand jurors aforesaid on their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 17th day of May, 1892, in said district, William H. Cochran being then and there the president and said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide national currency secured by a pledge of United States bonds, and to

54 provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 17th day of May, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including

amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do fur-
55 ther present that the said entry so made as aforesaid was then and there false in this, that the said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer and any agent appointed by the Comptroller of the Currency to examine the affairs of said association; and the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there president of said national banking association as
aforesaid and before the said offence as hereinbefore set forth
56 was committed in the form aforesaid, to wit, on said 17th day of May, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eighth count. And the jurors aforesaid on their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 12th of July, 1892, in said district, William H. Cochran being then and there the president and said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 12th day of

July, 1892, made to the Comptroller of the Currency in ac-
57 cordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of loans and discounts in said report; which said entry was then and there in the words and figures following—that is to say:

"Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers."

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.			

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made the loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said Robert H. Sayre, then and there well knew, and that the
58 said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid, with the felonious intent then and there on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 12th day of July, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 12th day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said

offence and misdemeanor in the manner and form aforesaid, contrary to the form of the statute of the United States in such
59 case made and provided and against their peace and dignity.

Ninth count. And the jurors aforesaid on their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the first of March, 1892, in said district, William H. Cochran being then and there the president and said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the first day of March, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

60 "*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*"

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.			

which said entry, so as aforesaid made in said report, then and purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thou-

sand dollars, and that said association had then and there
61 and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H. Sayer, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the first day of March, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said first day of March, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Tenth count. And the grand jurors aforesaid upon their
62 oaths aforesaid do further present that Robert H. Sayre, late of said district, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of Section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

63 And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and

effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that said entry so made as aforesaid was then and there false in this, that said association did then and there pay to sundry persons to the grand jurors unknown, a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he, the said Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the
64 30th day of September, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said thirtieth day of September, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eleventh count: And the grand jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 17th day of May, A. D. 1892, at said district, William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, A. D. 1864, and which said association was then
65 and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 17th day of May, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve

and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he, the said Robert H. Sayre then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did

66 not state the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as *they*, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 17th day of May, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Twelfth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of

67 said district, on the twelfth day of July, A. D. 1892, at said district, the said William H. Cochran being then and there the president and the said Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said

act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater
68 rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons, to the grand jurors unknown, a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he the said Robert H. Sayre, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as he, the said Robert H. Sayre, then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent on the part of him, the said Robert H. Sayre, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the twelfth day of July, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid and
69 before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said twelfth day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid, contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

HENRY V. JOHNSON,
United States District Attorney for Colorado.

(Indorsed:) No. 969. United States district c't, district of Colorado. United States *vs.* Wm. H. Cochran. Aid & abetting the making false entry in report to Comptroller of Currency. R. S., ≠5209. A

true bill. Henry P. Steele, foreman. Filed Nov. 22, 1893. Francis W. Tupper, clerk.

17th day, November term.

MONDAY, *November 27th*, A. *D.* 1893.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh instant.

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE.	960. Indictment for Aiding and Abetting the Making of False Reports to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said
defendants, in their own proper persons and by H. F. Rich-
70 ardson, Esq., their attorney, also come.

And thereupon the said defendants are arraigned and this indictment here read to them and they are required to plead thereunto; whereupon the said defendants, each for himself and not for the other, answer and saith that he is not guilty in manner and form as in and by this said indictment he stands charged; and of this he puts himself upon the country, and the said district attorney doth the like.

48th day, November term.

WEDNESDAY, *January 10th*, A. *D.* 1894.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge, and other officers as noted on the seventh day of November last past.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN	960. Indictment for Aiding in the Making of a False Report to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, by E. F. Richardson, Esq., his attorney, also comes.

And the motion of the said defendant to quash this said indictment coming on now to be heard is argued by counsel, and the court being now sufficiently advised in the premises, it seemeth to the court
now here that counts number ten, eleven, and twelve of the said
71 indictment are not sufficient in law, and so as to the said counts ten, eleven, and twelve the said motion is sustained; as to all other counts of the said indictment in said motion mentioned the said motion is overruled.

It is therefore considered by the court that the said defendant of and from the premises in counts number ten, eleven, and twelve of the said indictment specified be discharged and go hence hereof without day.

10th day.

FRIDAY, *May 11th, A. D.* 1894.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the first instant.

UNITED STATES OF AMERICA } 960. Indictment for Aiding in the
vs. Making of False Reports.
WILLIAM H. COCHRAN. }

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper persons and by C. E. Richardson, Esq., his attorney, also comes.

And it now appearing to the court that this cause and cause number 959 on the docket of this court are indictments against the same defendant and are of a like nature, it is ordered that this cause be, and is hereby, consolidated with cause number 959.

72 13th day.

WEDNESDAY, *November 22d, A. D.* 1893.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh instant.

In the Matter of THE GRAND JURY.

At this day come the members of the grand jury, heretofore duly empanelled and sworn as such jurors, and present to the court here the following true bills of indictment, to wit:

* * * * * * *

UNITED STATES OF AMERICA } 992. Indictment for Aiding the
vs. Making of False Reports to the
ROBERT H. SAYRE. } Comptroller of the Currency.

(Endorsed:) "A true bill." (Signed) "Henry P. Steele, foreman."

And thereupon it is ordered by the court that a bench warrant issue without delay against the said defendant and returnable forthwith.

* * * * * * *

73 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

At the November term of the district court of the United States of America in and for the district of Colorado, in the year of our Lord one thousand eight hundred and ninety-three, begun and held at the city of Denver, within said district, on the first Tuesday in November, in the year of our Lord one thousand eight hundred and ninety-three:

The grand jurors of the United States within and for the district of Colorado, good and lawful men, duly selected, impannelled, sworn,

and charged, on their oath present that William H. Cochran, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there president and Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said dis-
74 trict, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank, at Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said William H. Cochran, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City
75 in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said William H. Cochran, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said

association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 30th day of September, in the year of our Lord one thousand eight hundred and ninety-two, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said thirtieth day of September, A. D. 1893, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit
76 the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Second count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there president and Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the seventeenth day of May, 1892, made to the Comptroller of the Currency in accordance
77 with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in words and figures following—that is to say, "19, liabilities other than those aboves tated, none"—and which entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities in said report."

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said William H. Cochran, then and there well knew.

And that the said entry so made as aforesaid was then and there

false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said William H. Cochran, then and there well knew.

78 And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the association and any agent appointed by the Comptroller of the Currency to examine the affairs of the said association.

And the jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there president of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 17th day of May, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Third count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 12th day of July, A. D. 1892, at said district, the said

79 William H. Cochran being then and there president and the said Robert H. Sayre being then and there assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made

in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

80 And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said William H. Cochran, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said William H. Cochran, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, William H. Cochran, to injure and defraud said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

81 And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 12th day of July, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on the 12th day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Fourth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 9th day of December, A. D. 1892, at said district, Robert H. Sayre being then and there assistant cashier and the said William H. Cochran being then and there president of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and

redemption thereof," approved June 3rd, in the year of our Lord
82 one thousand eight hundred and sixty-four, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 9th day of December, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said William H. Cochran, then and there well knew.

83 And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said William H. Cochran, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 9th day of December, A. D. 1892, in said district, then and there being assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth in the form aforesaid, to wit, on the 9th day of December, A. D. 1892, at Del
84 Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do

and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Fifth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the first day of March, at said district, the said Robert H. Sayre being then and there assistant cashier and the said William H. Cochran being then and there president of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National bank at Del Norte, in the State of Colorado, at the close of business on the first day of March, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Re-
85 vised Statutes of the United States, a certain entry, under the head of "liabilities" in said report, numbered "19," which said entry was then and there in the words and figures following—that is to say, "19, liabilities other than those above stated, none"—and which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had no other debt and liability other than those debts and liabilities named and set forth in said report under said head of "liabilities" in said report.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the debts and liabilities named and set forth in said report under the head of "liabilities" in said report did not name and set forth all of the debts and liabilities of said association, as he, the said William H. Cochran, then and there well knew.

And that the said entry so made as aforesaid was then and there false in this, that the said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by the said association to
86 said Hanover National Bank of New York City, as he, the said William H. Cochran, then and there well knew.

And said debt and liability of said association to said Hanover National Bank of New York City was not mentioned and set forth and included in any manner in said report, as the said William H. Cochran then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H.

Cochran, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the first day of March, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on the said first day of March, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in manner and form as aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

87 Sixth count. And the grand jurors aforesaid on their oaths aforesaid do further present that William H. Cochran, late of said district, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two, in said district, the said Robert H. Sayre being then and there assistant cashier and the said William H. Cochran being then and there president of *the* a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

88 "*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*"

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate

and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry there made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said William H. Cochran, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at
89 Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, as he, the said William H. Cochran, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Savre, late of said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 30th day of September, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Seventh count. And the grand jurors aforesaid on their oaths aforesaid do further present that William H. Cochran, late of said district, on the 17th day of May, 1892, in said district, the said Robert H. Savre being then and there the assistant cashier and the
90 said William H. Cochran being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report

of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 17th day of May, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers."

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.		None.	

91 which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said William H. Cochran, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said William H. Cochran, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain

92 persons to said jurors unknown, and to deceive any officer and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 17th day of May, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet,

and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eighth count. And the jurors aforesaid on their oaths aforesaid do further present that William H. Cochran, late of said district, on the 12th of July, 1892, in said district, the said William H. Cochran, being then and there the president and Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an

93 act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 12th day of July, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of loans and discounts in said report; which said entry was then and there in the words and figures following—that is to say:

"*Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers.*"

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
None.			

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

94 And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made the loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said William H. Cochran, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there

of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said William H. Cochran, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on
95 the 12th day of July, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence was committed as hereinbefore set forth in the form aforesaid, to wit, on said 12th day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Ninth count. And the jurors aforesaid on their oaths aforesaid do further present that William H. Cochran, late of said district, on the first of March, 1892, in said district, the said William H. Cochran being then and there the president and Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there
96 acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the first day of March, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "loans and discounts" in said report; which said entry was then and there in the words and figures following—that is to say:

"Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, Including Amounts which Exceed this Limit Due from State and Private Bankers."

Name of borrower.	Enter full amount of loan.	Name of borrower.	Enter full amount of loan.
		None.	

which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

97 And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that said association had then and there and theretofore made loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers, as he, the said William H. Cochran then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the capital stock of said association was then and there of the sum, to wit, of fifty thousand dollars, and that said association had then and there and theretofore loaned to a certain banking institution known as the Miners' & Merchants' Exchange bank, at Creede, Colorado, a sum of money in excess of the sum of five thousand dollars, to wit, the sum of twenty-five thousand dollars, as he, the said William H. Cochran, then and there well knew, and that the said false entry was then and there feloniously made as aforesaid, with the felonious intent then and there on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the first day of March, A. D. 1892, in said district, being then and there assistant

98 cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said first day of March, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Tenth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said

district, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two, at said district, the said William H. Cochran being then and there the president and Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under said act of Congress and the acts amendatory thereof, did make, in a certain report of the
99 condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of "average reserve and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he, the said William H. Cochran, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as he, the said
100 William H. Cochran then and there well knew, and that the said false *ne*try was then and there feloniously made as aforesaid with the felonious intent on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 30th day of September, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said thirtieth day of September, A. D.

1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Eleventh count. And the grand jurors aforesaid upon their oaths aforesaid do further present—

That William H. Cochran, late of said district, on the 17th day of May, A. D. 1892, at said district, the said William H. Cochran being then and there the president and Robert H. Sayre being
101 then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 17th day of May, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

102 And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he, the said William H. Cochran, then there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not state the highest rate of interest paid by said association on deposits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as the said William H. Cochran then and there well knew, and that the said false entry was then and there falsely made as aforesaid with the felonious intent on the part of him, the said William H. Cochrane, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed

by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the 17th day of May, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said 17th day of May, A. D.
103 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

Twelfth count. And the grand jurors aforesaid upon their oaths aforesaid do further present that William H. Cochran, late of said district, on the 12th day of July, A. D. 1892, at said district, the said William H. Cochran being then and there the president and Robert H. Sayre being then and there the assistant cashier of a certain national banking association then and there known and designated as the First National Bank of Del Norte, Colorado, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, A. D. 1864, and which said association was then and there acting and carrying on a banking business in the city of Del Norte, in said district, under the said act of Congress and the acts amendatory thereof, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the twelfth day of July, A. D. 1892, made to the Comptroller of the Currency in accordance with the provisions of section 5211
104 of the Revised Statutes of the United States, a certain entry under the head of "average reserve and interest" in said report; which said entry was then and there in the words and figures following—that is to say:

"The highest rate of interest paid by the bank on deposits is 8 per cent."

And which said entry, as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that the said association did not pay a greater rate of interest upon deposits than eight per cent.

And the jurors aforesaid on their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than eight per cent., to wit, the rate of ten per cent., upon deposits, as he, the said William H. Cochran, then and there well knew, and that the said entry so made as aforesaid was then and there false in this, that the said entry so made as aforesaid did not set forth the highest rate of interest paid by said association on de-

posits, which said true and highest rate of interest paid by said association on deposits was ten per cent., as he, the said William H. Cochran, then and there well knew, and that the said false entry was then and there falsley made as aforesaid with the felo-
105 nious intent on the part of him, the said William H. Cochran, to injure and defraud said association and certain persons to said jurors unknown, and to deceive any officer of the said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association.

And the jurors aforesaid upon their oaths aforesaid do further present that Robert H. Sayre, late of said district, on the twelfth day of July, A. D. 1892, in said district, being then and there assistant cashier of said national banking association as aforesaid, and before the said offence as hereinbefore set forth was committed in the form aforesaid, to wit, on said twelfth day of July, A. D. 1892, at Del Norte, in said district, did unlawfully and feloniously counsel, aid, abet, and procure the said William H. Cochran to do and commit the said offence and misdemeanor in the manner and form aforesaid—

Contrary to the form of the statute of the United States in such case made and provided and against their peace and dignity.

HENRY V. JOHNSON,
United States District Attorney for Colorado.

(Indorsed:) No. 992. United States district c't, district Colorado. United States *vs.* Robert H. Sayre. Aiding and abetting the making a false entry in *in* reports to the Comptroller of the Currency. R. S., sec. # 5209. A true bill. Henry P. Steele, foreman. Filed Nov. 22, 1893. Francis W. Tupper, clerk.

106 17th day, November term.

MONDAY, *November 27th*, A. D. 1893.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh instant.

UNITED STATES OF AMERICA	)	992. Indictment for Aiding the Making of False Reports to the Comptroller of the Currency.
vs.	)	
ROBERT H. SAYRE.	)	

At this day comes H. V. Johnson, Esq., district attorney, who prosecuted the pleas of the United States in this behalf, and the said defendant, in his own proper person and by H. F. Richardson, Esq., his attorney, also comes.

And thereupon the said defendant is arraigned, and this indictment here read to him and he is required to plead thereunto. Whereupon the said defendant answers and saith that he is not guilty in manner and form as in and by this said indictment he stands charged, and of this he puts himself upon the country, and the said district attorney doth the like.

107 UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the District Court of the United States.

UNITED STATES OF AMERICA, Plaintiff, }
v. } No. 959.
WILLIAM H. COCHRAN and ROBERT H. SAYRE, Defendants. }

Come now the above-named defendants and withdraw their plea of not guilty as to the first, second, third, fourth, fifth, tenth, eleventh, and twelfth counts of the indictment heretofore entered in the above-entitled cause and move to quash said counts by leave of the court first had and obtained, and for the grounds of their motion allege and state:

First. That the first count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Second. That the second count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Third. That the third count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

108 Fourth. That the fourth count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Fifth. That the fifth count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Sixth. That the tenth count of said indictment is void for uncertainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Seventh. That the eleventh count of said indictment is void for uncertainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Eighth. That the twelfth count of said indictment is void for uncertainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Wherefore the defendants ask that said counts may be quashed.

E. F. RICHARDSON,
Attorney for Defendants.

(Indorsed:) No. 959. United States of America, District of Colorado, *ss.* United States of America *v.* William H. Cochran and Robert H. Sayre. Motion to quash. Filed Dec. 26, 1893.
109 F. W. Tupper, clerk. E. F. Richardson, attorney-at-law, Del Norte, Colo.

48th day, November term.

WEDNESDAY, *January 10th, A. D.* 1894.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge, and other officers as noted on the seventh day of November last past.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

UNITED STATES OF AMERICA *vs.* ROBERT H. SAYRE. } 992. Indictment for Aiding in Making False Reports to the Comptroller of the Currency.

110 At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, by E. F. Richardson, Esq., his attorney, also comes.

And the motion of the said defendant to quash this indictment coming on now to be heard is argued by counsel, and, the court being now sufficiently advised in the premises, it seemeth to the court now here that counts numbered ten, eleven, and twelve of the said indictment are not sufficient in law, and so, as to the said counts ten, eleven, and twelve, the said motion is sustained; as to all other counts of the said indictment in said motion mentioned, the said motion is overruled.

It is therefore considered by the court that the said defendant of and from the premises in counts number- ten, eleven, and twelve of the said indictment specified be discharged and go hence hereof without day.

10th day.

FRIDAY, *May 11th, A. D.* 1894.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the first instant.

UNITED STATES OF AMERICA *vs.* ROBERT H. SAYRE. } 992. Indictment for Aiding in Making False Reports.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, in his own proper person and by C. E. Richardson, Esq., his attorney, also comes.

111 And it now appearing to the court that this cause and cause number 959 on the docket of this court are indictments against the same defendant and are of a like nature, it is therefore ordered that this cause be, and is hereby, consolidated with cause number 959.

26th day.

TUESDAY, *June 5th, A. D.* 1894.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the first ultimo.

UNITED STATES OF AMERICA
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE.

959. Indictment for Making False Reports to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendants, in their own proper person and by E. F. Richardson, Esq., their attorney, also come.

And thereupon comes a jury, to wit, Edward L. Staats, T. O. Clark, D. K. Hessong, Arthur D. Bailey, W. W. Gayton, A. F. Terrill, J. E. Harrington, A. L. Peterson, Thomas B. Stearns, John Sparks, C. Hayden, Jr., Harry C. Stuchfield, twelve good and lawful men, and they are duly selected and tried, empannelled and sworn, to well and truly try and true deliverance make between the United States of America and the prisoners at the bar and a true verdict render according to the evidence.

112 And thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

The said jurors, being now each duly cautioned by the court not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part thereof nor to listen to such conversation of others, are permitted to retire, to meet the court at its next incoming.

27th day.

Present: Honorable Moses Hallett, district judge, and other officers, as noted on the first ultimo.

WEDNESDAY, *June 6th, A. D.* 1894.

UNITED STATES OF AMERICA
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE.

959. Indictment for Making False Reports to the Comptroller of the Currency.

At this day come again the said parties, by their attorneys, respectively, and the said defendants in their own proper persons also come, and, the said jurors heretofore duly empanelled and sworn in this cause being now all here present and in the jury-box, the trial herein is resumed.

And the said jurors, having heard the evidence produced herein and the instructions of the court, retire to their room, under charge of a sworn bailiff, to consider of their verdict.

And afterward and on this day come again the said jurors, and

on their oaths do say they find the defendants guilty as
113 charged in the first count of the indictment originally numbered nine hundred and sixty.

114 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the District Court of the United States in and for said District.

UNITED STATES }
vs. } #960. Motion for New Trial.
W. H. COCHRAN and R. H. SAYRE. }

Come now the above-named defendants, by Edward F. Richardson and Charles S. Thomas, their attorneys, and move the court to set aside the verdict of the jury in this cause and to award the defendants a new trial of the issues herein for the following reasons:

First. The court erred in permitting the report of the condition of the First National Bank of Del Norte on the 30th of September, 1892, to be admitted in evidence under the averments of said indictment.

Second. The court erred in permitting the Government to inquire into the truth or falsity of any items or any of the contents of the said report other than those the false making or entry of which formed the subject-matter of the charge in said indictment or any count thereof.

Third. The court erred in permitting the Government to
115 trace back any of the items forming the statement of overdrafts as appeared in said report.

Fourth. The court erred in refusing to permit the defendants to show that the last report made by said bank and made subsequent to the closing of its doors was made in the same manner as that of September 30th, 1892, and made under the direction of James B. Lazear, the bank examiner of the United States then in charge of its affairs.

Fifth. The court erred in admitting improper testimony for the prosecution over the objection of the defendants.

Sixth. The court erred in excluding proper testimony offered by the defense and objected to by the prosecution.

Seventh. Because the said verdict is against the evidence and the weight of the evidence.

Eighth. Because the said verdict is contrary to the law.

Ninth. Because the said verdict is opposed to the instructions of the court.

Tenth. Because the court erred in instructing the jury as follows:

"If, as I understood Mr. Cochran to say, this note at the time that it was given by Sayre and Clark was immediately discounted by the First National bank and the amount paid to Sayre by giving him credit upon the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan,

and the subsequent transaction with the Hanover National bank,
by which this note was transferred to that bank upon the
116 guaranty of the First National Bank of Del Norte, was a re-
discount of that note to that bank; and if the facts are as
thus stated the note should have appeared upon this statement
among notes and bills rediscounted."

Eleventh. The court erred in instructing the jury as follows:

"On the other hand, if the fact is not as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National bank and then sold to that bank upon the credit of Sayre and Clark and the First National Bank of Del Norte, all parties were makers of the note. They were makers of the note notwithstanding the guaranty put upon the back of the note, because it is a rule of law that if several persons execute a note at one and the same time, with a view to give to those who appear to be the makers of the note credit with the payee or the person to whom it is delivered, they shall be regarded as makers, and this notwithstanding the fact that one or more of said persons puts his name upon the back of the note instead of the front or at the foot of the note. In that view the bill or note would be one which would properly appear in this report under the head of bills payable, so that we may say that in either case, whether the note was discounted by the Bank of Del Norte by paying to Sayre the amount for which it was given at the time it was executed and afterwards sold by that bank to the Hanover bank or whether the transaction was first a sale to the Hanover bank with all the signatures upon it, that it should have appeared in one or the other of these places, in 17 or 18—that is, number 17 or 18 of the items making up the liabilities of the bank, as stated in this report."

Twelfth. The court erred in giving the jury the following instruction:

"The pleader in setting it forth seems to have been in doubt as to whether it should have been called one thing or another, and so
he assumed that it was one which should have been men-
117 tioned under the head of liabilities other than those above
stated, and I think he could reasonably do so, and that he
may charge that the entry was not true, as he has done, if there be any omission of the note in all of the paragraphs which relate to the liabilities of the First National Bank of Del Norte, so that we have no difficulty in saying that this is a liability which ought to have had a place among the liabilities of the First National Bank of Del Norte, as stated in the report."

Thirteenth. The court erred in giving to the jury the following instruction:

"It seemed to be assumed by counsel and by the witnesses on the stand that because it was paper which was not due that it would not have the character of a liability of the bank, and that because the bank appeared upon the paper as a guarantor that therefore it was one which it was unnecessary to mention in the report, but I do not think that can be a correct assumption."

Fourteenth. The court erred in giving the jury the following instruction:

"It seems that there was no entry in the books of this note; the note and everything connected with it was entirely omitted from the records of the bank from beginning to end, so that it would seem that the omission prevailing at all times must have been with the knowledge of all officers of the bank, or, at least, that would be a just inference."

Fifteenth. The court erred in refusing to give to the jury instruction numbered 3, prayed for by the defendants.

Sixteenth. The court erred in refusing to give to the jury instruction numbered 4, requested by the defendants.

Seventeenth. The court erred in refusing to give to the jury
118 instruction numbered 6, which was requested by the defendants.

Eighteenth. The court erred in refusing to give to the jury instruction numbered 7, requested by the defendants.

Nineteenth. The court erred in refusing to give to the jury instruction numbered 10, requested by the defendants.

Twentieth. The court erred in refusing to give to the jury instruction numbered 11, requested by the defendants.

21st. Because there is error in the record and proceedings in the trial of this cause because of other errors and irregularities appearing upon the face of the record in said cause.

Wherefore the defendants respectfully pray this honorable court to set aside the said verdict and grant the defendants a new trial in said cause in all respects and to every extent as though the same had not been heretofore tried.

EDWARD F. RICHARDSON &
CHARLES S. THOMAS,
Attorneys for Defendants.

(Indorsed:) No. 959. Dist. court of U. S., dist. of Colorado. United States *vs.* W. H. Cochran and R. H. Sayre. Motion for new trial. Filed June 9, 1894. F. W. Tupper, clerk. E. F. Richardson, C. S. Thomas, att'ys for defendants.

119 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the United States Circuit Court.

UNITED STATES OF AMERICA *vs.* ROBERT H. SAYRE and WILLIAM H. COCHRAN, Defendants. } No. 961. Motion in Arrest of Judgment.

Come now the above-named defendants, by their attorneys, Charles S. Thomas and E. F. Richardson, and move the court for an order in arrest of judgment in the above-entitled cause, and for the grounds of their motion allege and state:

First. That the indictment in said cause is insufficient to sustain

a judgment for conviction in that the same is founded upon an alleged guaranty of the First National Bank of Del Norte to the Hanover National Bank of New York of a note whereon the defendant Sayre and one A. H. Clark were the makers and the First National Bank of Del Norte is alleged to be the guarantor, such guaranty constituting in law no liability of the bank whatever.

Second. That the indictment is insufficient in its averments to sustain any conviction in that the act complained of is not sufficiently set out to apprise the defendants or either of them as to the violation which they are called upon to defend.

Third. That the indictment is insufficient to sustain a
120 conviction by reason of the fact that the report purporting to have been made under section 5211 of the Revised Statutes is not set out either in substance or in its effect.

Fourth. That the indictment is insufficient to sustain a conviction in that the report alleged to have been made under section 5211 of the Revised Statutes is not claimed by said indictment to have been verified by the president or the cashier of the First National Bank of Del Norte or attested by its directors, the allegation being in effect that said report was one made in accordance with law.

Fifth. That the evidence introduced varies from the terms of said indictment in that the report of September 30th is one made by the association pursuant to section 5211 of the Revised Statutes, when there is no allegation as to who made said report.

Sixth. That the evidence is insufficient to support the indictment in that there is no proof whatever that said First National Bank of Del Norte ever at any time guaranteed the payment of said note whereon the said Bank of Del Norte was alleged to be liable.

Seventh. That the evidence is insufficient to support the allegations of the indictment in that the note complained of was ever at any time a liability of the Bank of Del Norte as a guaranty.

C. S. THOMAS,
E. F. RICHARDSON,
Attorneys for Defendants.

121 (Indorsed:) No. 959. District court, district of Colo. United States of America *vs.* Robert H. Sayre *et al.*, def'ts. Motion in arrest of judgment. Filed July 24, 1894. F. W. Tupper, clerk. E. F. Richardson & C. S. Thomas, att'ys for def'ts.

122 64th day, May term.

TUESDAY, *July 24th, A. D.* 1894.

Present: Honorable Moses Hallett, district judge, and other officers as noted on the second instant.

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE.	959. Indictment for Making False Reports to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said

defendants, in their own proper persons and by E. F. Richardson, Esq., their attorney, also come.

And the motion for a new trial herein having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be, and is hereby, denied.

And the motion in arrest of judgment coming on now to be heard is submitted to the court, and, the court being now sufficiently advised in the premises, it seemeth to the court now here that the indictment, the said evidence produced, and proceedings had
123 are sufficient in law to sustain a verdict and judgment herein, and so the said motion is overruled.

UNITED STATES OF AMERICA	)	959. Indictment for Making False
vs.	)	Reports to the Comptroller of the
WILLIAM H. COCHRAN.	)	Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, William H. Cochran, in his own proper person and by E. F. Richardson, Esq., his attorney, also comes.

And thereupon the said district attorney moves the court for judgment upon the verdict of the jury herein; whereupon it is enquired of the said defendant if anything he hath to say why the judgment of the law should not now be pronounced against him; and thereupon he nothing saith except as he before hath said.

And it appearing to the court that there is within the district of Colorado no penitentiary or jail available for the confinement of convicts who may be imprisoned for a term exceeding fifteen months, and it further appearing that the Attorney General of the United States has in due form of law designated and appointed the penitentiary of the State of Illinois, at or near Joliet, in the State of Illinois, as a fit and proper place for the confinement of such convicts as may be committed by the judgment of any court within the district of Colorado for the term aforesaid:
124 Wherefore it is considered by the court that the said prisoner, William H. Cochran, be by the marshal from hence removed to the common jail of Arapahoe county, from whence he came, and from there be by the marshal removed and conveyed with all convenient speed to the penitentiary of the State of Illinois, at or near Joliet, in the State of Illinois, and there delivered to the warden or keeper of the said penitentiary and be by him, the said warden, therein safely kept and confined for the full period of five years from this day, fully to be completed and ended, to be fed and clothed as the law directs.

It is further considered by the court that the said William H. Cochran pay to the United States of America one-half of the costs of this proceeding, to be taxed, and let the United States have execution therefor.

UNITED STATES OF AMERICA *vs.* ROBERT H. SAYRE.	959. Indictment for Making False Reports to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, Robert H. Sayre, in his own proper person and by E. F. Richardson, Esq., his attorney, also comes.

And thereupon the said district attorney moves the court for judgment upon the verdict of the jury herein; whereupon
125 it is enquired of the said defendant if anything he hath to say why the judgment of the law should not now be pronounced against him; and thereupon he nothing saith except as he before hath said.

And it appearing to the court that there is within the district of Colorado no penitentiary or jail available for the confinement of convicts who may be imprisoned for a term exceeding fifteen months, and it further appearing that the Attorney General of the United States has in due form of law designated and appointed the penitentiary of the State of Illinois, at or near Joliet, in the State of Illinois, as a fit and proper place for the confinement of such convicts as may be committed by the judgment of any court within the district of Colorado for the term aforesaid:

Wherefore it is considered by the court that the said prisoner, Robert H. Sayre, be by the marshal from hence removed to the common jail of Arapahoe county, from whence he came, and from there be by the marshal removed and conveyed, with all convenient speed, to the penitentiary of the State of Illinois, at or near Joliet, in the State of Illinois, and there delivered to the warden or keeper of the penitentiary and be by him, the said warden, therein safely kept and confined for the full period — five years from this day, fully to be completed and ended, to be fed and clothed as the law directs.

It is further considered by the court that the said Robert H. Sayre pay to the United States of America one-half of the
126 costs of this proceeding, to be taxed, and let the United States have execution therefor.

UNITED STATES OF AMERICA *vs.* WILLIAM H. COCHRAN and ROBERT H. SAYRE.	959. Indictment for Making False Reports to the Comptroller of the Currency.

At this day comes H. V. Johnson, Esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendants, in their own proper persons and by E. F. Richardson, Esq., their attorney, also come.

And thereupon, on motion of the said defendants, day until thirty (30) days from this day is allowed them within which time to file a bill of the exceptions reserved by them upon the trial of the issues herein joined.

And it appearing to the court that the said defendants are about to sue out a writ of error to this court—

It is ordered that the said defendants be let to bail in the sum of five thousand dollars ($5,000.00) each, conditioned that they appear in this court on the first day of the next regular term thereof and from day to day thereafter to submit to the judgment of the court at this May term entered against them.

127 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the District Court of the United States.

UNITED STATES OF AMERICA
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE. } Bill of Exceptions.

Be it remembered that heretofore and on, to wit, the 5th day of June, A. D. 1894, the same being one of the regular days of the May term, 1894, of said court, the said cause coming on to be heard, the people, to maintain the issues in its behalf, called as a witness CHARLES W. THOMAS, who, being first duly sworn, gave evidence tending to prove that since May 1st, 1890, he had lived in Colorado and in and about Del Norte, Colorado, until shortly after the First National bank closed; that he met W. H. Cochran, the defendant, in the summer of 1889, on his first visit to Colorado; that his home before then was Portsmouth, Ohio.

And thereupon the United States, by its counsel, asked the witness the following question:

Q. Had you ever had any experience in a bank or the business of a bank before you came to Colorado?

To which quest. the defendants objected because it was wholly immaterial and irrelevant; that the court overruled the said objection; to which the defendants, by their counsel, then and
128 there excepted, and thereupon the witness answered:

A. I was never in a bank. After I returned from Colorado I went in a bank about the first of January, 1890, in Portsmouth.

The witness further gave evidence tending to prove that he was in a Portsmouth national bank about a week or ten days before leaving for the West; that he came to Colorado on account of his health and without any other experience in a banking business; that the First National Bank of Del Norte was organized and started business May 6th, 1890, shortly after his return to Colorado; that he had known of the intention of Cochran and others to organize a national bank at Del Norte by correspondence before he came out and by talk when he was out before; that Cochran first suggested the idea; that the organization papers for the bank were out before witness left Ohio. At the time of its organization witness took $3,000; his sister put in $3,000, and witness afterwards put in an additional thousand. Witness's age was then twenty-two years.

Before he returned the understanding was that he should be cashier of the bank, which was afterwards carried out. The bank capital was $50,000, with William H. Cochran as president and Robert H. Sayre as assistant cashier. All of them retained these positions till the bank closed. Witness was there on a salary for about two months. He remained as cashier up to the close of the bank, but was not on a salary longer than two months, because shortly after the bank started Mr. Cochran said there would not be work enough for three in the bank; that they could buy a mill for less than it was worth,
129 and that it was better for witness to do outside work on account of his health than work in the bank, so the mill was bought and witness was put in as its manager. Its name was the Del Norte flouring mill. Mr. Cochran was president and witness was manager till about two weeks before the bank closed. The duties of witness as manager of the mill occupied practically all of his time. His office was in the bank, but witness was not in the bank every day. Sayre and Cochran attended to the duties of the bank, and Sayre was there every day. One or the other of them was always there and had the active management of the bank business. When witness was in the bank Cochran often asked him to sign correspondence and sometimes he signed drafts; not more than ten or fifteen during the last year. The correspondence he was asked to sign was already written and some of it by Cochran. Don't think Sayre wrote any.

And thereupon the counsel for the Government asked the witness the following question:

Q. When the comptroller would call on the bank for statements what was your habit as to taking any part in the getting up of those statements?

To which question the defendants objected because immaterial and that the attention of the witness should be called to the specific statements on which the defendants were indicted. The witness should be asked concerning what he did with reference to
130 particular statements, and it is immaterial what his habit was; but the court overruled the objection; to which ruling the defendants, by their counsel, then and there excepted, and thereupon the witness answered as follows:

A. Well, I never made any statements.

The witness then further gave evidence tending to show that the statements were handed to him and they told him the statements were all right and he would sign them. During the year 1890, there were several times that he took the statements—the general balances and the statements—and examined — the best he could, and the statements *tarried* with the books just as they had been represented. After 1890 he didn't think it was of any use to continue to examine and compare them, because he had every confidence in Sayre and Cochran and didn't think it was necessary. The reports were never made out by witness, but by some one else. They were made out mostly by Sayre, sometimes under the direction of Cochran

and sometimes written out by other parties in the bank. The original was usually made to send on and the bank kept what was known as a duplicate. When they were being prepared Sayre and Cochran would go over the books getting up the figures to put in them. Mr. Cochran was not there every time, but most every time. He was there during the getting up of the statements in 1892. Witness saw Cochran and Sayre working over the books and knew each time when they were called upon by the comptroller for a statement of the condition of the bank. I was not there all the time, but I think I was
131 there when the statements were gotten up in March, May, July, September, and December. Sayre and Cochran got them up and I signed them. The witness was here handed a report, and said that it was signed by him as cashier and by William H. Cochran, Ralph Granger, and Louis Weiss as directors, and dated March 1st, 1892. He recognized the signatures, and among them that of the defendant Cochran. The witness was then handed a statement dated May 17th, 1892, and testified that it was signed by himself as cashier, by J. J. Crosswy, William H. Cochran, and Louis Weiss, directors. The witness was also handed a statement bearing date July 12th, 1892, and testified that it was signed by himself as cashier and by William H. Cochran, Ralph Granger, and Thomas F. Brown. The witness was handed another statement, dated September 30th, 1892, and testified that it was signed by himself, J. J. Crosswy, Weiss, and Cochran. Witness was also handed a statement dated December 9th, 1892, and testified that the same was signed by himself, William H. Cochran, and R. H. Sayre. The witness also testified that the handwriting in the body of the statement of March, 1892, was that of Edward Sayre, a brother of the defendant, who was in the bank and connected there with his brother; that number two was also in the handwriting of the said Edward Sayre, as was the one of July 12th; that the statement of September 30th was made out by Robert H. Sayre, while that of December 9th was in the handwriting of Edward Sayre. The witness then gave testimony tending to show that after the reports had been signed by
132 himself and the other parties they were sent to Washington by mail. The witness generally mailed them to the comptroller; that either Cockran or Sayre told him the statements were all made out ready to sign, and he signed them without examining them as they were handed to him and without assisting in their preparation or comparing them with the books of the bank.

The defendants here conceded that the reports were properly mailed to and received by the comptroller.

And thereupon the witness further gave testimony tending to show that the bank kept duplicates of the original statements, which duplicates were shown to the witness, who testified that they were in each instance in the handwriting of the persons making the originals, except that the one of December 9th was in the handwriting of one G. W. Reightmeyer.

The witness was hereupon shown a certain note of the Hanover National bank and testified that the same was filled out in the handwriting of the defendant Sayre, whose signature, with that of one

A. H. Clark, was appended to it; that the signature of William H. Cochran, president, was on the back of it. The first the witness knew of the note being in the shape that it was was when Mr. Lazear told him after the bank closed, which was on December 17th, 1892. Witness further stated that he meant by the term "that the shape it was in" that he didn't know the bank had anything to do with the note; he knew there had been a loan made, but in what
133 shape he didn't know. Mr. Sayre had said that he had made a loan with the Hanover National bank; didn't tell the witness how much; didn't show him the note. Witness don't remember when the loan was first made and didn't know the condition in which it was; Cochran didn't say anything to him about having guaranteed the payment of the note. Sayre said he had made arrangements in New York, which was about a year prior to the time when Lazear told him about the note. Witness asked nothing about details; Sayre didn't offer to explain them, and witness never saw the note until it was shown to him upon the stand; don't think he ever saw any of the notes executed for $5,000 therein mentioned.

Thereupon the Government, by its counsel, offered to introduce the reports or statements thereto shown to the witness.

And thereupon the defendants, by their counsel, asked leave to cross-examine concerning said statements, and on such cross-examination the said witness testified in substance that he signed and swore to all of said reports before a notary public. No one swore to them but himself. He did not examine them because he did not think there was any need. He believed they were all right and simply took their word. There was no reason why he should not have examined every item upon the reports, the office of the mill company of which he was manager being right in the bank. His desk adjoined that of Mr. Sayre. Witness did not keep the mill books, but was down where the mill was part of the time and in the bank part of the time. It was his habit to swear to
134 these reports without questioning their accuracy and swore to the last one of them after the bank had suspended. He didn't examine that any more than the others. He didn't know whether Lazear had made it or not. Don't know whether Lazear examined the report before witness swore to it or not. Lazear said there was no use in sending it, but witness signed and swore to it and sent it in.

And thereupon the Government, by its counsel, proceeded with his direct examination of said witness and asked him the following question:

Q. Now, Mr. Thomas, was that note what you call in its present condition a rediscounted note?

To which question the defendants, by their counsel, objected, because the witness had already testified that he knew nothing about banking business and was therefore incompetent to answer the same; but the court overruled said objection, to which ruling the defendants, by their counsel, then and there excepted.

And thereupon the witness answered the said question as follows:

A. Yes, sir; I say it is payable to the First National Bank of Del Norte and it is rediscounted to—I don't say what bank it is rediscounted to—it says for value received, hereby guaranteeing the within note at maturity, etc.

The witness thereupon further gave evidence tending to
135 show that the note should have appeared in the statements under the heading of notes and bills rediscounted, bills payable.

Witness then gave evidence tending to show that he knew of a bank at Creede called the Miners' & Merchants' Exchange Bank of Creede, which was organized about the first of the year 1892; that there was an overdraft of the Miners' & Merchants' Exchange Bank of Creede during the year 1892 at the First National Bank of Del Norte, but witness does not remember how much it was in July of 1892; that there was an overdraft which should have appeared on the July statement under the head of "due from State and private banks or bankers" or under the head of "excessive loans." The First National bank made a loan to the Creede bank of $5,000 upon a note about February, 1892, which was never paid back to the bank. The overdraft of the Creede bank in the First National bank at the time the latter closed was about $20,000 in addition to the $5,000 loan, but witness does not remember when the overdrafts commenced running.

And thereupon the Government, by its counsel, offered to introduce to the jury the original statements of the Comptroller and the duplicates thereof, and also the note of Robert H. Sayre and A. H. Clark; whereupon the defendants, by their counsel, objected to the introduction of the said statements and each of them—

1st. Because each and every count of the indictments charge the defendants, one as president of the First National Bank of
136 Del Norte and the other as assistant cashier of said bank, with making the reports, but the reports appear to have been made and verified by Charles W. Thomas, cashier, and signed by different parties as directors of the bank; also because neither of the defendants can be convicted under the indictments as principals with regard to making the said reports or either of them, but only as accessories under section 5209, if at all.

That no one except him who verified the reports can be convicted under said indictments or either of them; that the said defendants are indicted with having, as president and assistant cashier, made and caused to be made false reports and entries therein, whereas the statements offered are signed by the defendant Cochran as a director, while the defendant Sayre signed none of them except that which was made after the examiner took charge of the bank and which bears the date of December 9th, 1892.

And thereupon the court sustained the objection to all of the said reports except that which is dated September 30th, 1892, which was admitted before the jury, and the said report so admitted was

marked "Exhibit A," and is in words and figures following—that is to say:

(Here follows report of the First National bank, marked p. 137.)

138 To which ruling of the court in admitting said schedule or report, the defendants by their counsel then and there excepted.

And thereupon the witness, being cross-examined, testified in substance, that he lived in Denver and had been living there for about a year; that he was one of the original incorporators of the bank; that he at first subscribed to three thousand of the stock; that before he became cashier of the First National Bank of Del Norte he had been in the bank about two weeks. He knew that Cochran had never been in the banking business before that time. He did not know how long Sayre had been in the banking business, nor did he stop to inquire about it. Some time after he became manager of the milling company he got a new desk. He didn't know how many hours of every day he spent in the bank. There was a counter in the bank. While he drew a salary as cashier, he got $100.00 a month, and received the same salary as manager of the milling company. Cochran was president of both the bank and the milling company and witness was cashier of the bank and manager of the milling company. Some of the mail coming to the bank was addressed to Charles W. Thomas, cashier. Witness sometimes opened the correspondence; didn't resign as cashier; informed none of the depositors that he was nominally the cashier and that Sayre was running the business for Cochran and could not recall a single time during the period of his officiating as cashier when anybody questioned his authority as such. He made very few loans. Sayre was in the bank always except at meal-times. Witness was there
139 from 12 to 1. When Sayre was not there his brother was, and in his absence either the witness or his brother officiated at the bank. When Cochran was away and customers came to the bank to borrow money sometimes they went to Sayre and sometimes to witness. I didn't turn them over to Sayre when they came to see me, but told them they would have to see Cockran, who had charge. Along in February and March, 1892, and during the boom Cochran was in Creede a good deal. The boom period was in January, February, and March. He was up there some time during the summer. During that period Sayre had charge of the bank. Witness was in there of course at times, his headquarters at all times being in the bank. Witness signed some drafts besides those that were signed at Cockran's request, and correspondence also. Letters were frequently dictated to him upon the typewriter. Witness knew what those letters contained and understood that part of the business. He knew something about the correspondence of the bank and something of its business beyond that. He knew the Creede bank had an overdraft of $20,000, but didn't make any examination of the books; knew the $5,000 note of the Creede bank had not

been paid, because he saw the note at the time it was rediscounted. He swore to the statements sent to the comptroller because he took the chances of their being correct. Sometimes he asked questions in regard to them and sometimes he did not. If Sayre replied that they were correct he would swear to them. He saw $20,000
140 overdraft on the books of the bank, yet when told by either Cockran or Sayre the statements were ready to sign he would sign and swear to them. Cockran would tell witness the reports were made out, whereupon he would go right over and sign them and swear to them as correct. Witness would not now say that they were not correct; does not know; didn't go through them and didn't help make them. Witness remembers having been a witness in the case of the United States against Cockran and Sayre, tried on the 7th of May, 1894; does not remember what he said at that time. Witness was then asked if his testimony at the time mentioned was not as follows:

"Q. And yet you helped make out and swear to all the reports of the bank?"

"A. I swore to all the reports; I helped to make them out."

Q. Did you say that?

A. I did not say that I helped to make them out.

Q. Do you say you did not at the trial of the United States against Cockran and Sayre on the 7th of last May, in answer to this question, "And yet you made out and swore to all the reports of the bank?" make this answer, "I swore to all the reports; I helped make them out"? Do you say you did not do that?

A. No, sir.

The witness, further cross-examined, testified, in substance, that the first he knew of the Hanover bank note, signed by Sayre and Clark, in the shape in which it was — when Lazear told him about it after the bank had closed. He didn't know what shape it was in
141 before that time; knew Sayre said he had made a loan; don't know from whom he said he had made it, but it was a note at the Hanover National bank; was cashier of the bank at the time, but it was none of his business. Sayre didn't say that he had made the loan through the bank, and witness didn't know he had made it through the bank. Don't know whether the notes which this one was given to renew was or was not sent to Charles W. Thomas for collection and credit. They might have come that way. Don't remember when Sayre told him he had made a loan from the Hanover National bank. In the first place Sayre had a loan in Kansas City. They were pushing him, and he asked witness to see if he could get the money for him while East. Witness could not do it. Some time after his return Sayre told witness he had made an arrangement with the Hanover National bank carrying his stock. Witness knew that Sayre had been credited on the books of the First National bank with the amount. He didn't know the note had been rediscounted, but supposed it had until the bank was closed. He did not know what shape it was in until Lazear showed him a statement which he had sent to the different banks the First National had done business with. Sayre's atten-

tion was then called to it and Lazear asked what it meant. This was after the December report had been made and mailed. Sayre didn't call attention to the existence of that note before that report was made either to me or Lazear. Witness did not know that the
142 note upon which Sayre had got $5,000 was rediscounted until Lazear told him it was. He didn't know that the bank had anything to do with that amount or that it was liable until Lazear told him it was. Up to that time he didn't suppose it was a liability.

And thereupon the defendants' counsel asked the witness this question:

Q. Didn t you borrow $5,000 and give your note?

To which question the Government, by its counsel, then and there objected.

The defendants' counsel offered to show that the witness had borrowed $5,000 on his own account in the bank and that his wife had borrowed the same amount, the purpose being to show that the witness was familiar with the condition of the bank.

But the court sustained the objection; to which ruling the defendants, by their counsel, then and there excepted.

The witness was then asked when it was that he had made up his mind that the entry of the note for $5,000 should have appeared in number 17 of the report entitled "notes and bills rediscounted;" to which he answered that he didn't know when he did it; that Mr. Lazear didn't tell him that, but he knew it in a general way before he heard of Lazear. Witness further testified that he never had any experience in book keeping, his business being live stock. Witness further testified that he did not know whether the Hanover bank
143 note appears under the head of "notes and bills rediscounted" or not. For all he knows to the contrary, it does there appear. Witness further testified that the bank overdraft should have appeared under the heading of "loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including moneys which exceeded this amount due from State and private banks and bankers," and that it should appear under the heading of "due from State and private banks and bankers." Witness further testified that he did not know whether the Creede bank overdraft appeared under the item of "due from State and private banks and bankers" or not.

And thereupon defendants' counsel asked the witness this question:

Q. Should the same item appear more than once in that statement, what would be the result?

To which question the Government, by its counsel, then and there objected, and the court sustained the objection; to which ruling the defendants, by their counsel, then and there excepted.

And thereupon, on cross-examination, the witness further testified that he did not know whether the Creede bank account appeared

under the head "due from State and private banks and bankers" or not. Witness further testified that he did not know why the indictment was not found against him as well as the other defendants; that he was the principal witness for the United States; that no promise of immunity of any kind had been made to him
144 in the event he should appear and testify in behalf of the Government; that no inducement of any kind, nature, or description had been held out to him concerning that suit; that he had not been promised, directly or indirectly, any sort of immunity in the event no indictment should be found against him and he should appear against the other parties, and did not know why he was not included in the indictment.

On redirect examination the witness testified that the letters which he wrote on the typewriter were dictated by the defendant Cochran.

And thereupon the Government, to further maintain the issues in its behalf, introduced WILLIAM LOGAN, who, being duly sworn, gave evidence tending to show that he lived in Brooklyn, New York, and was credit clerk of the Hanover National Bank of New York city; that he had been a clerk in said bank since June, 1881, and credit clerk since January first, 1893; that during the latter part of 1891 and all of 1892 he was discount clerk, and as such superintended all the interests that were made on the discount books, worked up all information for officers and directors of the bank pertaining to loans and discounts, and had the custody of all discounted notes and securities. The witness was thereupon handed the note hereafter set forth and stated that it had passed through the Hanover National bank, to which it then belonged.

And thereupon the Government, by its counsel, asked the witness the following question:

145 Q. Is that note the renewal of other notes or not?

To which question the defendant objected because immaterial, but the court overruled the objection and instructed the witness to answer the question; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon the witness answered as follows:

A. This note is a renewal of a note that matured on August 21st, 1892, made by the same parties and guaranteed and endorsed by the same bank and for the same amount.

The witness thereupon testified that he did not have the other notes which had been sent to the First National Bank of Del Norte for collection; were charged to their account when they became due, and the proceeds of that note and the proceeds of another renewal credited to the account of the First National Bank of Del Norte. By proceeds is meant the amount of the note less the interest for the time it had to run at the rate of six per cent. per annum. The note of which this is a renewal was itself a renewal of another note.

All this testimony, it was understood, was included under the original objection thereto and to which the exception applies.

And thereupon the witness proceeded to testify that the date of the other note was the 18th of April, 1892; that there was a previous note of which that was a renewal, dated the 18th day of December, 1891, which was discounted by the Hanover National bank on the 21st day of December, 1891, for account of the First Na-
146 tional bank of Del Norte, which was the original transaction for the same amount executed by the same parties. Witness could not say that the reading of the guarantee was the same, but it was either endorsed or guaranteed by the First National Bank of Del Norte; could not say that Mr. Cochran signed the guaranty or the endorsement. It was signed by an officer of the bank—either guaranteed or endorsed in blank. If it was endorsed to the First National bank we considered that obligated the bank as much as the guarantee.

Q. So that upon this note, the two original notes of which you have spoken, the First National bank was indebted to your bank from December 18th, 1891, up to the present time?

The question was objected to by the defendants because immaterial and calling for a legal conclusion, but which exception the court overruled; to which ruling the defendants, by their counsel, then and there excepted.

And thereupon the witness answered:

A. Yes, sir.

The witness further testified that the note had never been paid; that soon after its maturity it was sent to Mr. E. F. Richardson, attorney, at Del Norte, for collection, who had sued both the makers of the paper, obtained judgment, and also instituted suit against the guarantor, the First National Bank of Del Norte. Witness further testified that he had some correspondence with reference to the original note of December, 1891, from the First National
147 Bank of Del Norte. Witness then produced a letter that enclosed the note discounted on the 21st day of December, 1891; also a letter of April 11th and of August 19th, 1892, the first containing a renewal and the last the note in evidence.

On cross-examination defendants' counsel read the letter of December 14th, 1891, which was as follows:

EXHIBIT "E."

W. H. Cochran, president; J. J. Crossway, vice-president; C. W. Thomas, cashier; R. H. Sayre, assistant cashier.

The First National Bank of Del Norte.

No. 4264.

Capital stock and surplus, $53,060.00.

DEL NORTE, COLO., *Dec. 14th*, '91.

Jas. M. Donald, cash., New York, N. Y.

DEAR SIR: Your esteemed favor of the 8th inst. at hand, and contents noted. We are pleased to state that we are getting along nicely and have concluded to keep a much larger balance with you. We enclose a note of five thousand dollars signed by Sayre and Clark, guaranteed by us, which please place to our credit. We do not want it now, but want to be prepared with a good N. Y. account. In a former letter you stated that if we kept an average balance of $2,000 or more, you would place our account on an interest basis, which you may now do. We will send you a statement of the call made Dec. 2nd by tomorrow's mail.

Very resp'y yours,

(Signed) W. H. COCHRAN, *Pres.*

148 The witness then testified that the note which the letter enclosed was entered on the books and termed a discount. The bank had no distinction between a discount and a rediscount in entering it on their books. If asked the question tech*in*-ally whether it was a discount or a rediscount, they would determine from the correspondence and the appearance of the note. If it had been made by the bank they would call it "a bill payable." The entry on their books would show the first column discount—that is, the book of original entry is headed for whose account the discount is made. In that column there would appear the name of the First National Bank of Del Norte. The next column is headed "payers, makers or payers," and in that would be placed the name of the makers of the paper, which in this instance would be Clark and Sayre. The next column is "endorsers," in which would be placed the name of the First National Bank of Del Norte, and which gives the time the note has to run, the date it matures, and its proceeds. They make no distinction between endorsers and guarantors, unless the note is attached; then there is a statement guaranteed by so and so. The witness could not say whether the endorsement written upon the back of the first note was identical with that which appeared on the one in evidence, because they don't keep copies of the backs of notes. The letter having reference to the guaranty, it would be a fair assumption that the writing upon the back of the first note was that which appeared upon this one. That note was due in four

months, and was sent back on the 11th of April. Counsel
149 for defendants here read a letter dated December 28th, 1891, referring to the same matter and from the defendant Cochran to the Hanover National bank as follows:

EXHIBIT "G."

W. H. Cochran, pres't; R. H. Sayre, vice-pres't; Chas. W. Thomas, cashier.

First National bank.

No. 4264.

Capital stock, $50,000.00, fully paid.

DEL NORTE, COLO., *Dec.* 28, 1891—p. 21.

Jas. T. Woodward, Esq., pres't Hanover Nat'l b'k, N. Y.

DEAR SIR: Your favor of the 21st inst. at hand, and contents noted. In reply will state that we hold ample security for the note besides the name of A. H. Clark, who is good.

In regard to placing our acc't on an interest basis, we find that you agreed to that, but nothing was said in regard to discounts. Therefore, as you say it is contrary to your usual custom, we will not expect it.

Very resp'y yours,

(Signed) W. H. COCHRAN, *Pres't.*

(In pencil:) Campbell.

(In pencil:) Note due Ap'l 18.

And thereupon the witness on cross-examination further testified that the note was probably returned to the First National Bank of Del Norte a few days prior to April 11th. It would be a fair assumption to say it was addressed to C. W. Thomas. It was the custom of the Hanover bank at that time.

Counsel thereupon read the letter returning the new renewal note in April, as follows:

150 EXHIBIT "F."

W. H. Cochran, president; J. J. Crosswy, vice-president; C. W. Thomas, cashier; R. H. Sayre, assistant cashier.

The First National Bank of Del Norte.

No. 4264.

Capital stock and surplus, $53,000.00.

DEL NORTE, COLO., *April 11th*, 1892.

Hanover National bank, New York:

We enclose new note and check for interest on rediscounted note, $100. Business is good here and there is a spirited demand for money at good rates.

With kindest regards, we are

Resp'y yours,

(Signed) W. H. COCHRAN, *Pres't.*

(In pencil:) Dis., 5,000; mat., Ap'l 18; av'ge, 3,500; act'l, 770.
(Marked in pencil:) 2,800, Jan.
4,500, Feb.
13,000, March.

The witness further testified that when that note matured he sent it back the same way and probably to C. W. Thomas, cashier; that afterwards he received the letter dated August 19th, 1892, as follows:

EXHIBIT "D."

W. H. Cochran, president; J. J. Crosswy, vice-president; C. W. Thomas, cashier; R. H. Sayre, assistant cashier.

The First National Bank of Del Norte.

No. 4264.

Capital stock and surplus, $53,000.00.

DEL NORTE, COLO., *Aug. 19th*, '92.

151 Jas. M. Donald, cash., New York, N. Y.

DEAR SIR: Enclosed please find new note, with interest for four months.

Yours resp'ly,
(Sig.) R. H. SAYRE.

(In pencil:) Check ret'd 8, 23.

The witness further testified that to be the note which had been offered in evidence and sent to Mr. Richardson for collection, who had brought suit against the makers of it, recovered judgment, and then brought suit against the guarantor.

Upon redirect examination the witness testified in substance that all the correspondence relating to the notes had been produced, none of which was signed by Mr. Thomas. He is quite certain that he addressed his letters to Thomas, cashier, because some letters relating to renewals and collections so addressed had been returned to him in the letters above copied.

And thereupon the Government, to further maintain the issues in its behalf, called J. H. ABRY, who, being first duly sworn, testified in substance that he was receiver of the First National Bank at Del Norte and had been since the 26th day of January, 1893, at which time he received the bank books and assets and papers from James B. Lazear, the national bank examiner.

The defendants thereupon admitted that the First National Bank of Del Norte was properly incorporated with a capital stock of $50,000; that it formally closed its doors on the 17th day of
152 December, 1892; that during its existence the defendant Cochran was its president and the defendant Sayre its assistant cashier.

Thereupon the witness further testified in substance that he was familiar with the handwriting of the defendants Sayre and Cochran and, upon being shown the note hereinafter set forth, testified that all the written portion of it except the signature of A. H. Clark was in the handwriting of the defendant R. H. Sayre, and that the handwriting in the written portion of the guarantee on the back of it was that of the defendant W. H. Cockran. The witness, being shown the report of September 30th, 1892, testified that the handwriting in the body of it was that of the defendant Robert H. Sayre, assistant cashier, and that the signature of W. H. Cockran thereto was the signature of the defendant Cochran; that the duplicate of the report was also in the handwriting of the defendant Sayre.

And thereupon the defendants, by their counsel, admitted the signatures to the various letters theretofore introduced and read.

And thereupon the witness further testified that if the note introduced in evidence was a regularly discounted piece of paper it should appear under item 17 of the report, which reads "notes and bills rediscounted," but that this note does not appear in that item, the amount of which is $41,110.

And thereupon the defendants, by their counsel, admitted that the note of the Hanover National bank heretofore introduced in evidence is not included in that amount. The witness fur-
153 ther testifies that the note which is marked "Exhibit C" does not — anywhere in that statement and could not appear elsewhere than under item 17, 18, or 19; that it does not appear in the duplicate there. Witness made a special examination for it and is prepared to show from the books what constitutes all the items there; that the amount due the First National Bank of Del Norte from the Miners' & Merchants' Bank of Creede on September 30th, 1892, as shown in the shape of an overdraft, was $10,870.11, in addition to which it owed the First National bank at that time a note amounting to $5,000, which matures November 27th following. This was a note in renewal of one executed some time in January following.

Thereupon the defendants, by their counsel, admitted the existence of that note and of an overdraft of between ten and twenty thousand — since July some time of 1892, and that at the time the bank closed there was an overdraft from the Miners' & Merchants' Exchange Bank of Creede of over $20,000, but objected to the introduction of such testimony because wholly immaterial under the issues, but the court permitted the same to go to the jury; to which the defendants, by their counsel, then and there excepted.

The witness further gave evidence tending to show that neither the note or the overdraft, with the exception of something less than $5,000 on the note, had ever been paid; that with reference to the Hanover National Bank transaction the books show that bank on
December 15th, 1891, to be charged with $5,000, and Robert
154 H. Sayre is credited with an equal amount.

And thereupon it is admitted that Mr. Cochran was the proprietor of the Miners' & Merchants' Exchange Bank of Creede and doing business under that name.

And thereupon the witness upon cross-examination testified in substance that if a national bank should loan its credit to an individual or corporation for any purpose the place where the fact would appear upon a report made to the comptroller would depend in what shape its credit was in. If the First National bank would endorse your note and in that way loan its credit to you that method would not appear on the statement. If the First National Bank of Del Norte should guarantee an individual note to the First National Bank of Denver it would not appear on the report, there being no place for it. The $10,870.11 testified to in chief was due from the Creede bank to the First National bank. So far as the witness's knowledge goes the Creede bank was a private bank or banker; that amount was due from a private bank or banker to the First National Bank of Del Norte in the way of an overdraft. It was due from one bank to another, and that other a national bank. In the report of September 30th, under the head of "due from State and private banks and bankers," there is an entry of $11,345.88, which includes the item of overdraft from the Creede bank.

And the Government, to further maintain the issues on its
155 behalf, thereupon called J. B. LAZEAR, who, being duly sworn, testified in substance that he was and for seven years past had been an examiner of national banks, prior to which time and for twenty-five or thirty years he had been in the banking business; that as bank examiner he took charge of the First National Bank of Del Norte the latter part of December, 1892; previously and in July, 1892, he had examined it, on which occasion he found nothing upon the books, nor did he gain any knowledge of a note for $5,000 executed by the defendant Sayre and A. H. Clark to the First National Bank of Del Norte and by it guaranteed to the Hanover National bank. They told him nothing about it and he made no inquiries concerning it. Neither of the defendants spoke to him about it at all until after he took charge of the bank, in December. Cochran was in charge of the bank in Del Norte, but witness does not think that Sayre was there during his examination. Shortly thereafter the witness ascertained that there was something irregular in regard to a $5,000 transaction between that bank and the Hanover National bank. He ascertained it by means of department circulars sent to the Hanover National bank, which disclosed that the bank was holding under discount a note of $5,000, which the witness did not detect as being on the book at that time. It was not amongst "bills payable" at that time. When the witness makes examinations he has specially prepared circulars to address to all the banks corresponding with the bank examiner, which, in addition to
156 giving the debit and credit balances in certain entries, are required to state whether the bank holds any paper of the bank examined on which its endorsement appears as guarantor or endorser or on which it is in any way liable. This circular when returned disclosed that the Hanover bank held a discount of $5,000.

The defendants, by their counsel, here objected to this answer

because immaterial and because the answer suggests better evidence of the facts testified to, but the court overruled the objection; to which the defendants, by their counsel, then and there excepted.

And thereupon the witness, continuing his answer, said: This note itself is of bills payable—that is, a banker styles it "bills payable." It shows it has been rediscounted by the Hanover National Bank of New York by the protest papers connected with it, which should properly appear.

And thereupon the witness continued to testify in substance that the note should properly have appeared in the statements introduced in evidence on the liability thereof under heads numbered 17, 18 or 19 either as "notes and bills rediscounted or liabilities other than those above stated." If the Miners' & Merchants' Exchange Bank of Creede were indebted to the First National Bank of Del Norte on September 30th, 1892, by an overdraft and note *which* should appear on the resource side either under the item of "overdrafts" or as "due from State and private banks and
157 bankers" on the face, and if it was an amount in excess of ten per cent. of the capital stock of the bank it should appear in the schedule on the reverse side under the head "loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed that limit due from State and private banks and bankers."

And thereupon the counsel for the Government asked the witness this question:

Q. What was the amount due as an overdraft from the Creede bank to the First National Bank of Del Norte when you took possession of it as examiner?

To which question the defendants, by their counsel, objected because immaterial and improper, but the court overruled the objection and permitted the witness to answer the question; to which ruling the defendants, by their counsel, then and there excepted.

And thereupon the witness answered the question as follows:

A. It was about $22,500.00 on overdraft, $5,000 additional on note, making about $28,000.

On cross-examination the witness testified in substance that the defendant Sayre was absent when witness examined the bank in July, 1892, but witness cannot say that he was absent all the time. Witness was there about a day and a half, during which time Sayre's brother had charge of the books. Mr. Thomas was there. Witness
cannot say that he was in the bank at that time, but during
158 the course of the witness's examination he was there off and on. The witness did not make any inquiries of Thomas, although the latter proffered his assistance. The regular book-keeper was Robert Sayre. Witness thinks there was a large overdraft of the Creede bank in July, but don't know what the amount was. If it was over $5,000 it was in excess of the ten per cent. limitation. Witness understood then that Mr. Cochran was the Miners' & Merchants' Bank of Creede; that he first knew of the note as the result

of the department circular two or three weeks after he had made the examination; not the note in evidence, but a note. Witness cannot recollect in what manner the Hanover National bank then held the Del Norte bank responsible for $5,000, but knew it was a $5,000 note of some kind, which he was unable to discover by his examination of the First National Bank of Del Norte. Mr. Sayre told witness when he went back to take possession that there was an item not upon the books; that it was a private matter of his own which the bank had simply guaranteed. This was a very short time after the bank had been closed. The report of the condition of the bank on December 18th, verified on December 31st, was not made under the witness's supervision. Mr. Reightmeyer was in the bank, but witness did not employ him to go there. He had a room in the bank and witness may have asked him to do some work, but cannot recollect it. Witness cannot recollect particularly what that report was; did not glance at it, but knew it was due.

159 The witness continued his testimony as follows:

It is my presumption from the protest paper attached to the Hanover bank that it was a rediscount. The note is made payable to the First National Bank of Del Norte. If the payers intended to pay it to that bank it would not have been necessary for the Del Norte bank to endorse it in this way. Inasmuch as it is endorsed "The First National Bank of Del Norte," it must have passed out of the hands of that bank. With that endorsement it passed out of the hands of the bank or the parties guaranteed or endorsement on it; I don't know what you call it—endorsement or guaranty. I think there was a difference between a rediscount and a guaranty. The stamp on the back of the note, "For value received we hereby guarantee payment of the within note at maturity or at any time thereafter, with interest at the rate of six per cent. per annum until paid, waiving demand of notice of non-payment or protest," is common for bankers to put on a paper that is rediscounted. The difference between endorsement and guarantee of paper is a legal one. The witness was then asked whether if the First National bank guaranteed the paper of one individual to another where such a liability would appear on the report; to which he answered that if it does not appear at 17 and 18 it must appear at No. 19 under the head "liabilities other than those above named." The witness was

160 then asked whether if the First National Bank of Del Norte endorsed the note of an individual to the First National Bank of Denver and before it is due a report is called for where the transaction would appear on the statement; to which he replied that if it did not appear at 17 or 18 it should appear at 19, whether it was due or not.

And thereupon counsel for the defendants asked the witness the following question:

Q. Whether it is a liability or not would you call it a liability until I had failed to meet the obligation?

Objected to by the counsel for the Government because calling for a conclusion of law; which objection was by the court sus-

tained; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon the witness continued to testify in substance that an overdraft of a bank was a loan which should appear in the report to the comptroller under the head of "loans exceeding the limit prescribed by section 5200."

When the witness took possession of the First National bank at Del Norte he took into custody the duplicate reports; was there about thirty days, during which time he probably examined the reports.

Witness further testified that he was arrested on account of some claim made to papers in his custody as receiver and claimed by outside parties, and was tried concerning the same in October, 1893; but the episode did not result in creating the slightest
161 degree of antipathy against the defendants. He did not after that trial appear before the grand jury and present the charge that resulted in this indictment; does not know when the indictment was found; that is a matter within the knowledge of the United States district attorney. None of the newspaper articles relating to Mr. Cockran's transactions with the First National bank emanated from me.

On redirect examination the witness testified that the constable came with a summons from the justice of the peace, and the witness, being an United States officer, did not want to act in violation of any law, but concluded to go with the constable to the justice. The constable also had a search warrant, in which he made demand at the bank for a certain deed which I was charged with having and Charles W. Thomas was charged with having stolen. I finally told him the paper for which he was seeking was in the bank vault. Both Mr. Thomas and the witness were acquitted by the jury. I have in this matter simply acted as the examiner and a party placed by the Government in charge of the bank.

The note put in evidence, marked "Exhibit C," is in words and figures following, to wit:

$5,000.00. DEL NORTE, COLORADO, *August 21st*, 1892.

Four months after date we jointly and severally promise to pay to the First National Bank of Del Norte five thousand dollars, with interest at the rate of four per cent. per month from date until paid, waiving the right of homestead and exemption laws; and it is considered and agreed that in case suit is brought to collect this
162 note a reasonable amount for attorneys' fees shall be allowed.

R. H. SAYRE.
A. H. CLARK.

Endorsed on back: "For value received we hereby guarantee payment of the within note at maturity or at any time thereafter, with interest at the rate of six per cent. per annum until paid, waiving demand of notice of non-payment or protest. W. H. Cochran, president."

And thereupon the Government, by its counsel, rested.

And thereupon the defendant Cochran, by his counsel, asked the court to instruct the jury that no case whatever has been made or proven against him and to order a verdict of not guilty as to him, the said defendant, there being not the slightest scintilla of testimony showing or tending to show that he, the said Cochran, had anything to do with the preparation of the report in evidence; but the court refused the said motion and declined so to instruct the jury; to which action of the court the defendant Cochran, by his counsel, then and there excepted.

And thereupon, to maintain the issues upon their part, the defendant *being* called as a witness ROBERT H. SAYRE, who, being duly sworn, testified in substance—

That he resides at Del Norte, Colorado, without any occupation at the present time; that on December 30th, 1892, I was working in the First National Bank of Del Norte; have seen "Exhibit A" before. I made out the paper just prior to the 30th of September. It was made as a report to the Comptroller of the Currency.

163 I don't remember exactly the amount the Creede bank was then owing to the First National bank at Del Norte, but it is correctly stated in the report under the head of "due from State and private banks and bankers." If other State banks and private banks owed the bank it would also appear there. I think there was an amount owing the bank besides the amount due from the Creede bank, which would appear with that amount. Under the head of "loans and discounts" there was another amount owing from the Creede bank to The First National bank, which was a loan for which the Creede bank's paper was taken. The other amount does not appear under the same item because it was not a loan. It was carried, strictly speaking, as an overdraft, and so appeared upon the books of the bank. The amount does not appear in both places as "due from private banks and bankers" and also as an "overdraft," because the report would not be correct but would double up. I put upon this side of the report all the bank's "resources," and if I had stated and put this item under the head of "overdrafts" and also as due from "private banks and bankers," it would have been double and would not have been correct.

By the COURT: Won't you ask him whether that item "due from private banks and bankers" don't mean moneys deposited with such bank. As for illustration, if a national bank has money on deposit with a private bank, does it not mean that?

To which the witness answered:

164 A. Yes, sir; practically the same thing, I should say.

And thereupon the witness continued: It includes any amount also due, no matter how, from State and private banks and bankers. The department sends out these circulars printed, and under the printed head of course I put what I have on my books. I had on my books, due from private banks and bankers, at that time about $11,000. I carried it from my books to the report, as the comptroller asked me to do, and the report shows an exact copy

of my books on that date. I have seen the plaintiff's "Exhibit C" of the Hanover bank note before. It was given by me and Mr. Clark and was sent to the Hanover National bank, guaranteed by the First National Bank of Del Norte by W. H. Cochran, president. At the time I made this report to the Comptroller of the Currency this note was in existence but was not due. I did not incorporate it in that report because it did not belong there. I borrowed the money—understood that I borrowed the money—from the Hanover National Bank of New York. The First National Bank of Del Norte had nothing to do with it, only guaranteeing its payment. As soon as the letter of advice was received from the Hanover National bank showing that they had discounted I think it was transferred to my credit. I heard Mr. Lazear's testimony about my calling his attention to this matter. The note would mature four months from August 21st, and a day or two after Lazear came to take possession of the bank after its failure I called his attention to it. I think it was about the 20th of December. His testi-
165 mony as to that is substantially correct. I called his attention to it because being endorsed by the bank it would probably become liable, as I could not meet it. I therefore called his attention to it. The note did not in any way appear on the books of the First National Bank of Del Norte, but the account simply, the $5,000 being credited to me and charged to the makers or to the Hanover bank. I think Mr. Cockran had nothing whatever to do with the making of the report of September 30th, 1892, because I was in the habit of copying them myself. I was the book-keeper. Cochran had practically nothing to do with the books, though he of course examined them. I should say he had nothing to do with the report except to sign his name to it as a director. I am acquainted with Charles W. Thomas, who is the cashier of the bank. He was there during that summer and swore to the report. He helped in the bank and the mill and attended to the correspondence about the mill. I kept the books of the mill, of which Mr. Cochran was president. I was treasurer of the milling company. Each of us had certain duties to perform in running the mill as well as the bank. I first heard here in this room that Mr. Thomas was only nominally the bank cashier. I should say that he was present in the banking office during banking hours two-thirds of the time, at least, in 1892. I had nothing to — with inducing him to sign or verify the reports. I made no request of him to sign them beyond saying that they were ready to go off on the mail. In making this report I had no intention of deceiving or militating any-
166 body. If I had put this Hanover bank note upon the report it would have falsified the books of the bank because the note was not entered there.

Upon cross-examination of the witness Sayre he testified in substance:

I am thirty-eight years old; have been in the banking business about three years, with some slight experience before becoming

assistant cashier at Del Norte, which I had gotten in Ness City, Kansas, where I was for, possibly, three months preparing myself to take charge of the Del Norte bank. I am a graduate of a college and at present assistant professor in mathematics and civil engineering in a college at Del Norte, but without any pay. The report of September 30th is my handwriting. Mr. Cochran may possibly have been around when I was making it out. I don't know that he was usually present when these reports were made out. He was practically at the bank every day when he was in Del Norte. He took an active interest as president in the affairs of the bank, but I don't think he signed all reports to the comptroller. He usually signed them because he was president. His signature is to the report of September 30th. I don't say that he knew nothing about the report. I don't say he helped me. I suppose he knew because he signed it. I don't remember that he examined it, but suppose it is in the natural order of his business to make an examination of it. I think he was familiar with the affairs of the bank.

167 He was the one doing business under the name of the Miners' & Merchants' Exchange bank, all of whose assets he assigned to me when it failed. He was not exactly the prime mover in starting that bank. After that bank up there commenced going down he assumed the responsibility of it, but had not done so before. It is not a fact that item 9, showing what is due from State and private banks and bankers, was intended to mean and refer to money of the First National bank on deposit in those banks. There is an item number two for overdrafts in the report, and there was an overdraft of the Creede bank since the report was made. I think that on September 30th, 1892, there was some money in the Creede bank due to the First National Bank of Del Norte. Their records show that there was. No statement of what appears to be due other banks and bankers refer to the overdraft in the First National Bank of Del Norte. It was an overdraft due from private banks and bankers. The proper place to put it was not under the head of "overdrafts," but it would have made no particular difference in the report if I had put it there. I didn't put it there because it was due from private banks. The amount under the head of "overdrafts" in the report represents what was due from individuals and what was taken from an individual ledger. The other due from banks and bankers was not carried in the general balance book. I did not put the overdraft under the head of "loans exceeding the limit prescribed by section 5200," etc., because I did not think it belonged there. It was amount due from

168 State and private banks and bankers, and I put it under that head, which I thought was all that was necessary. I had no reason for writing the word "none" under the other heading. I didn't put it there because I didn't want the comptroller to know of the Creede overdraft, for if I wanted to conceal it from him I could not have put it in at all. I wrote "none" in there because I considered I had put the item in the proper place, which was all I thought necessary. Of course, I thought it was true when I wrote the word "none." I didn't consider the overdraft as an excessive

loan, but drew a distinction between a loan and an overdraft. I don't remember now what the amount of the overdraft of the Creede bank was. Practically nearly all of the amount is the overdraft. The amount stated is $11,345.88. I know without looking at the books there was due an overdraft of some ten thousand dollars because the report made an exact copy of my books.

Responding to a query of the court as to whether there was any other bank owing anything the witness responded that they had an account with the State bank at Monte Vista and the Bank of Monte Vista also. The books show that the Creede bank overdraft consisted of $10,870.11 and that of the bank of Monte Vista was $475.77. I know the latter to be an overdraft because it is in red ink on the books and the Creede bank account is also in red ink. The two items make up the amount under the head of "due from private banks and bankers." The amount of $3,745.12 under item number two is from my individual ledger and is made up of individ-
169 ual accounts overdraft to that amount. I put the others as I did because they were banks.

And thereupon counsel for the Government asked the witness this question:

Q. Now, will you turn to your individual ledger and show me of what that overdraft consisted?

To which question defendants, by their counsel, then and there objected because there is no charge in that indictment that that item on the report is false; but the court overruled the objection; to which action of the court the defendants, by their counsel, then and there objected.

And thereupon the witness, turning to the individual ledger of the bank, testified that the total sum representing the individual overdraft account was made up of the following items:

Fifty cents, George C. Berlin.
$40.24, Budenbrach & Bingham.
$197.24, W. H. Cockran.
$32.66, Cochran Brothers, of which firm the defendant is a member.
$88.66, Kahns.
$25.79, H. M. Dyer.
$13.50, Inquirer Publishing Company.
$891.84, Esmond Mining Company.
$66.15, G. W. Franklin.
$138.97, Golconda Mining Company.
$77.40, Grand View Mining Company.
170 $13.44, G. N. Jerome.
$16.59, Mercer.
$12.10, Park.
89 cents, Powell.
$481.21, E. F. Richardson.
$392.04, Rio Grande Meat Company.

$5.50, Sanders.
$743.90, loan company.
$111.87, Coffin.
$114.62, Tradis, sec'y & treas.
$220.71, Chapman Drug Company.
Total, $3,745.12; corresponding to amount of report.

And thereupon the witness continued:

Under item No. 2 is the statement "see schedule," and under the head of "schedules" there is a heading of "overdraft" on the back. Under the head of "secured overdrafts" I have placed, under the head of "temporary overdrafts," $3,745.12. Under the head of "unsecured overdrafts" I have written the word "none."

And thereupon the counsel for the Government asked the witness the following question:

Q. Now, why did you write the word none in there, Mr. Sayre?

To the asking of which question the defendants, by their counsel, then and there objected, because they are nowhere charged in the indictment with making false entries in that part of the
171 schedule, but the court overruled the said objection; to which action of the court the defendants, by their counsel, then and there excepted.

And thereupon the witness answered the question as follows:

A. I wrote the word none in there for the reason that I had not them secured, I suppose; none secured; none, secured or unsecured. The drafts were all secured in a sense. Certainly they were all expected to be paid; that is what that means. They are only temporary; they might be blotted out the next day, as the book shows.

And thereupon counsel for the Government asked the witness this question:

Q. Under the head of "secured" and "unsecured," Mr. Sayre, are not there lines here, "standing twelve months or over, standing three months or over, standing one month or over," and then "temporary"?

To which question defendants, by their counsel, objected for the reasons last above assigned, but the court overruled the objection; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon the witness answered:

A. Yes, sir; and I have written the whole of that $3,745.12 on the line "temporary," meaning that the overdrafts were only temporary and that they might be liquidated any time by deposits. I understand this statement to say that if any of these overdrafts have been standing three, six, or twelve months I should put them on the line corresponding to those months. Some of these overdrafts
172 may have been standing one or three months. On close examination I should have put them there. If any one ac-

count should have been continued just the same for a month it would probably have gone above there, but I don't know that is the case. It would not be the same overdraft if it varied five cents.

The witness here traced back the overdraft of the San Luis Valley Company from September 30th and stated that on September 29th, 30th it was $743.90; on September 29th, $726.40; on September 28th, $731.11; and September 27th, $641.80.

And thereupon the Government, by its counsel, asked the witness this question:

Q. See if it continues as an overdraft for a month back.

To the answering of which question the defendants, by their counsel, objected, because clearly incompetent and not admissible under the allegations of the indictment; but the court overruled the objection; to which ruling of the court, the defendants, by their counsel, excepted.

And thereupon the witness answered that the account was alike for two days at a time, and on September 19th they got a deposit of $92.04. The witness was then asked to run the Rio Grande Meat Company's overdraft back and show that it varied from $392.40 on September 30th to $2,230.86 on August 30th, while on June 20th it was $2,038.56, and stated that while it was an overdraft of more than three months' standing it varied during that
173 time. The account of E. F. Richardson was then in like manner traced back, varying in different amounts to June 25th, where it is credited with $80.20. Mr. Sayre says he does not remember whether on September 20th, 1892, he was a director of the bank or not.

And thereupon the Government, by its counsel, asked the following question:

Q. Under the heads of loans and discounts, under the schedule, you have written the word "none" opposite liabilities of directors, individual and firm, as payers "none." Why did you write the word "none" there?

To the asking of which question the defendants, by their counsel, objected for the reasons given above, to wit, that the said testimony was incompetent under the indictment and the defendants having been charged with making false entries as to the particulars embraced in said question; but the court overruled the said objection; to which ruling of the court the defendants, by their counsel, excepted.

And thereupon the witness answered:

A. Because the amount- were given in the total of bills payable. Liabilities we had as notes came under the head of "bills payable" and they were so entered. There is written in red ink opposite to that item "enter the amount in each of these three items or write in the word 'none' if there is no amount to enter." I say there were no liabilities to the bank as of September 30th, 1892.

other than those mentioned. There is no original item re-
174 lating "to other than those mentioned," and there is a state-
ment, an express statement there, "included in the above are bad debts, other suspended and overdue paper, liabilities of directors, individual and firm, as payers." I include in the "loans and discount" notes executed by directors of the bank to the bank, and I wrote "none" at that point, because having been mentioned in the "bills payable" that was sufficient. I don't know as I understood what that meant when I was filling it out, but filled it out the way I understood it at the time. I filled out ten or a dozen since the bank was organized and they were all about like that.

And thereupon counsel for the Government asked the witness this question:

Q. Did you have any bad debts as of September 30th?

To which question the defendants, by their counsel, objected because immaterial and incompetent and not warranted by the said indictment; but the court overruled said objection; to which ruling of the court in overruling the same the defendants, by their counsel, then and there excepted.

And thereupon the witness answered the question as follows:

A. I so considered September 30th we had none—so think. I might think now we have had some bad debts. I don't think, if the bank continued, we didn't have. When a bank fails, paper that might be considered good in running along would be considered
very bad after it closed. I thought it was all good as of that
175 date. We have no suspended and overdue paper at that
time. I told Mr. Lazear about the Hanover National bank note of my own motion without any suggestion from anybody. I know Mr. Thomas, of Omaha, who was in Del Norte about December, 1892, but he never said anything about it to me nor I to him. I don't think he ever knew I had anything to do with the Hanover National bank.

Upon redirect examination the witness stated in substance that Thomas did not arrive in Del Norte until about two weeks after Lazear did. I filled out ten or a half dozen of these reports to the Comptroller of the Currency and they correspond exactly to my general balance book here, every one of them. The only difference between our keeping the account of the overdraft with the bank at Monte Vista and that of the Creede bank is in the amount; that they were both included in the item which appears as "due from private banks and bankers." I did not consider this bank overdraft as a loan, because it was reported as an overdraft and an overdraft is not a loan. It is brought about by overchecking on the bank and the banks honor the check. When we make a loan to an individual we take his paper in the *form* of a note, so the loans go in one place and the overdrafts in another. The word "none" in this item relates to "loans exceeding the limit prescribed by law." It does not refer to "overdrafts." I remember something about the last report made, which was in the last of December.

176 Q. How did that report come to be made?

But the court refused to permit the said question to be asked or answered, and thereupon the defendants, by their counsel, offered to show by the witness that at the time of the making of the last report, which occurred after the closing of the bank, it was made under the counsel and direction of James B. Lazear, national bank examiner, and that when so made it was turned over to him by the officers of the bank and last seen by them in his possession; that the report is identical in form and substance with the report which is in evidence of the date of September 30th; and the said defendants, by their counsel, excepted to the ruling of the court in refusing to permit the said question to be asked or answered.

And thereupon the defendants, to further maintain the issues on their part, called WILLIAM H. COCHRAN, who, being duly sworn, gave testimony tending to show that he lived in Del Norte, Colorado, and was president of the First National Bank of Del Norte prior to the 19th day of December, 1892, which bank was organized in March, 1890, and began business May 6th, 1890. Up to that time I had no experience in the banking business. I assisted in making out the first two or three reports that were made to the Comptroller of the Currency. "Exhibit A" is a report showing the condition of the bank on September 30th, 1892. I had nothing whatever to do with its preparation. I don't remember that I saw the

177 report after it was made. My signature is attached to it. I looked over the report carefully to see that it corresponded with the general balance book and the books of the bank before I signed it, and it was correct in every particular. I had nothing to do with it until after it was made up, and it was submitted to me by the cashier, Mr. Thomas, and the assistant cashier and book-keeper, Mr. Sayre. The amount due from State and private banks and bankers was $11,345.88. As I understood at the time, part of it came from the bank at Creede and part from the bank at Monte Vista. The items are correct and arose in the regular course of business. The regular course with reference to those items would be if a man would come in and deposit a check in the First National bank and draw against the bank at Monte Vista or the bank at Creede or against any other bank, and then those banks were charged with the amount of that check and his private account would be credited. When this report was made it would be due from or due to, or, on the other hand, it might be that so much would be due to another bank. For instance, a man should come in and deposit a check against the First National bank drawn against a bank in Denver, then the bank in Denver would be credited with that amount and the report would read "due to other parties." If they had drawn upon my bank their account would be overdrawn if they had no deposit to meet them. The account was designated in this report as "due from State and private banks and bankers." It was not

put in under the head of "overdrafts," because in one sense of

178 the word it was not an overdraft. I wanted to have the report made so that it would show the condition of the bank ex-

actly, and instead of showing the overdrafts from individuals we stated, as shown here, "amounts due from private banks and bankers." If we had put it in both places it would have increased the assets of the bank and the amount of the item at that time, and that would have shown a false statement of "resources." It would not have shown the condition of the bank correctly if it had been done in that way. We don't put the single amount in under the heading which occurs on the back of the report, because it says there "loans exceeding limit, etc.," and this was not a loan. A loan is the raise of money in the bank from individual paper with a note, which is entered as "bills payable" on the books of the bank, while with an overdraft there is nothing at the time to show. A loan is payable at a certain specified time and an overdraft is payable at any time after made and is expected to be paid at once. Its condition is fluctuating. I would not be positive as to whether any of these overdrafts mentioned on the schedule were in normal condition for any period of time exceeding one month, but I understand not. In addition to the Creede bank overdraft, it owed a note which we called a loan; that appears in item 1, "loans and discounts," because it belonged there. It could not have been put under the heading "due from State and private banks and bankers," because it was included in loans, and if stated under the
179 last-named head would have shown the "resources" five thousand dollars greater than they were. I know all about "Exhibit C," called the Hanover bank transaction. Mr. Sayre, one of the signers of that note, and Mr. Clark wanted to obtain $5,000 and made this note or another like it and the First National bank guaranteed the payment of it. It was sent to the Hanover National Bank of New York and the First National bank had nothing to do with it other than the guarantee. I think there were three renewals of it. The bank failed December 17th and the last note became due December 24th. The note had nothing to do with the books of the First National Bank of Del Norte, because it was no part of the bank's business. The guarantee was a loan of credit of the bank to these parties and had nothing to do with the financial transactions. When the Hanover National bank discounted the note it was placed to the credit of Mr. Sayre. I know Charles W. Thomas, who was cashier of the bank during the summer of 1892. He spent a large proportion, two-thirds, of his time in the bank. During that summer I was for a large part of the time at Creede because I was connected with a bank there also. I heard Mr. Thomas's testimony and would say that, while he probably might have drawn a check to pay himself, Mr. Sayre was just as much entitled to that as he. We three were connected with the mill and with the bank, and we agreed each one should receive a salary of $100.00 a month, but one salary should come from the mill, making the mill bear one-third of the expense.
180 The work that was done for the mill was in the banking office. Mr. Sayre was treasurer and I was president. The book-keeper was Sayre. Thomas ordinarily answered all bank correspondence and opened nearly all the mail. At times when

I was in the bank I would write and he would copy from the typewriter and sign his name to it. He started into the bank, after having gone into a bank in Ohio to study the business, to take the part of the cashier, and carried it out to the best of his ability. I heard the testimony of Mr. Thomas with reference to the making out of those reports and counselling him with reference to them; it was untrue in great part. I don't remember particularly having any conversation with him. When the bank first started we three, not being very well versed in these matters, talked it over considerably. After that he and Sayre were expected to make the reports by simply copying the books, of which the report is simply a transcript. It is not a difficult matter to make a report to show the "resources" and "liabilities." After that I had very little to do with it.

On cross-examination the witness testified in substance that before signing the report he examined it carefully, compared it with the books, saw it was correct, and signed it. "I did not put the amount due from the Creede bank under the head of "loans exceeding the limit," because that relates to loans. The $10,000 was due from the Creede bank and exceeded the limit, but that was not a loan; it was an amount due. The heading says "loans," but, as I said, this was not a loan. It should never have appeared under the head of "overdrafts," and I did not think it could have appeared there and made a true report. It was an overdraft in one sense. There is a difference between an overdraft drawn by a man against a bank and the amount due from a bank. I think I understand from item second on the statement, which says "overdrafts," "see schedule," that it referred to the back of the report where "overdrafts" are referred to; but I don't think that a bank overdraft appeared there. I don't think that it would have been correct to have put this item under the head of "overdrafts" and not put it under the head of "due from State banks and bankers," because when you get to the item "due from banks and bankers" we would have to put it in again. I don't think that on the 30th of September there were any liabilities of the directors of the bank, but I did not go through that part to investigate whether there were or not. I was a director and I was also the Miners' & Merchants' Exchange bank at Creede, from which the amount of $10,000 was due the First National bank; that should not have appeared under the statement; the loan that was made to the Miners' & Merchants' Exchange bank appears above and is not in excess of the limit. I do not think that the note should have appeared under the heading "liabilities of directors," under the head of "loans and discounts," because that was not a direct liability of the directory at all. It had no business to appear there. In fact the note was made by Mr. Owens, of the bank. It was not made as an individual liability of myself to the First National bank, but was signed by J. F. Owens. I became responsible for it and was a director at that time. Mr. Thomas was at that time owing the First National bank on the mill account a note of $5,000, and so was

Mr. Sayre. The Hanover note was made upon one of the bank's blank notes, but was not made to our blank at all.

It was thereupon read to the jury.

I still say that it is not a note to the First National bank He was owing $5,000 on the mill account and was a director of the bank at that time.

Q. Now, can you explain why he wrote "none" in there opposite "liabilities of the directors of the bank"?

To the asking of which question the defendants, by their counsel, objected because immaterial and incompetent under the issues; but the court overruled the objection; to which ruling of the court the defendants, by their counsel, then and there excepted.

And thereupon the witness answered:

A. In the first place, I didn't write "none." Mr. Sayre wrote it because he didn't consider nor was it considered that that was an individual affair at all. We didn't consider that the bank had any bad debts as of the 30th of September. I don't think we had any suspended or overdue paper, but could not say as to that absolutely. The time that I was at Creede was not confined to the spring and early summer of 1892. I spent the whole of three months
183 during the boom time; then the fire came in June, and I spent quite a little time, and later on, of the last two months of the existence of the bank, I was in Creede almost wholly, scarcely a day in Del Norte during that time. In September I was back and forth between the two banks. When I was in Del Norte I was in the bank every day. I participated actively in its business and knew almost every transaction in a general way that occurred, and I examined and was thoroughly posted as to the condition of the bank when I signed that report.

And thereupon, at the request of the court, counsel asked the witness this question:

Q. The court desires to know if the First National Bank of Del Norte, when this transaction first occurred of the $5,000 note of Mr. Sayre and Clark, in December, 1891, advanced this money.

A. No, sir; not at all; did not give the credit until after the note had been sent to the Hanover National bank and returned to Charles W. Thomas as credited with the proceeds of the note, which was something less than $5,000. I am sure that is the case, but do not definitely remember the date of the first note. I am familiar with the affairs of the bank, but do not know whether I can turn to the books and find the date where it was credited to Mr. Sayre, but will attempt to do so. On the 21st was not time for it to get back. The amount would not have gotten back from New York. His first thousand was credited on the 26th day of December, 1891.

I don't say that Mr. Sayre got credit for $5,000; they might
184 have deposited in the bank; it would show somewhere else. It seems that on December 26th, as soon as it could get back from New York, he deposited a thousand dollars. It is nowhere

shown on the books where he got the amount of this note. I do not think the books show the date and time upon which Mr. Sayre got the proceeds of the note and also the disposition of the $5,000; that would be none of our business, unless he deposited it in our bank. The books only show that he got a thousand in money; but he got the whole $5,000. What he did with it is something I don't know.

Q. Mr. Cochran, will you please step here? What do you find under the head of R. H. Sayre? What do you find as of date December 15th, 1891?

A. I find that Sayre is credited with $5,000.

By the COURT:

Q. Is that the proceeds of this note? Let us see if that is the proceeds of the note. Read the whole explanation—what it shows.

A. On the other day Mr. Sayre was charged with two thousand dollars and credited with five thousand. I can't say where he gets the credit from, but appears under the head of deposits. I presume it is the proceeds of the first note, of which this note is a renewal. I do not know it to be a fact. I have no way of knowing without looking the matter through. I presume that is the proceeds of the $5,000; I think so. That note was first sent to the Hanover National bank. They would not give us a credit until after we had written to them and found out they had it—a note of that
185 kind. I think I wrote to them under my own signature as president about that particular note and about the time the note was first sent to them.

The witness here reads the letter of December 14th, 1891, from himself to James M. Donald, cashier, which appears in the cross-examination of the witness Logan.

That letter is dated the 14th day of December, 1891. On the next day he is credited with $5,000, which I presume is the proceeds of this note. I think it would be some time after that before we got the proceeds of the note from the Hanover National bank, but I don't remember.

The letter of December 28th, 1891, from Cochran to James T. Woodworth, president, also appearing in the testimony of the witness Logan, was here read.

And the witness proceeded to testify in substance that they never wound up the business with the Hanover National bank at all.

I think they took the note at once. They asked something in regard to security. I think their letter would state, "We presume you are amply secured;" something of that kind. That was the reply I made. The first letter I wrote them was dated the 14th, and it appears that we got credit for the $5,000 the next day.

Upon redirect examination the witness testified in substance that during all this period of time Mr. Sayre had a $5,000 note in the

First National Bank of Del Norte, which was renewed from time to time. If he renewed that note on the 14th or 15th of December it would appear on his account. I think he took $4,000 of this money to the bank for an obligation which he had in Kansas City.

186 It is my understanding that the proceeds of this loan which he negotiated with the Hanover National bank were received by Mr. Sayre on or about December 26th, 1891, and one thousand dollars was placed to his credit, the other $4,000 being used for the purpose of taking up his obligation in Kansas City. I could not state that this $5,000 of December 15th had anything to do with it. I have a letter from the Hanover National bank, dated December 21st, which refers to the matter. That letter could not have returned to the First National bank by December 26th in the ordinary course of mail.

And thereupon the letter was read as follows:

"Your favor of the 14th inst. came duly to hand.

We presume you hold security. Kindly advise us, stating the security.

As to the subject you mention in your letter that we promised to give interest, we hardly think we agreed to pay interest on this account for you at the same time, as this is entirely contrary to our rules; we never promise this to any one; might look up the matter.

WOODWARD, *President.*"

I think we agreed to give the Hanover National bank the additional security. This discount would have arrived in the ordinary course from the Hanover National bank in about eight or ten days. I aim to answer letters as soon as they come, but *is* not

187 always there. My being in Creede, two or three days might elapse before I would reply.

On recross-examination the witness stated in substance that it was possible that the credit of $5,000 to Sayre as of December 15th was the renewal of his note. I cannot find out from the books of the bank whether that is true. I do not know that I could without taking a great deal of time. I do not think that our books, general balance, as of December 15th, 1891, would show when we gave Sayre credit for $5,000; that we charged the Hanover National bank with $5,000. I do not think our general balance book would show that. It would have been right in the course of the transaction, when we gave Sayre credits to charge the Hanover National bank with the $5,000. Our book shows—general balance shows—that the Hanover National bank is debited with $5,000, and also $58.10, another item. It reads, "Hanover National bank. Sayre, R., $5,000 and $58.10;" that would indicate that it was a Sayre note. An item of "resources," whether note or not; I don't know what the $58.10 indicates. It may have been for interest. It would have to go to the deposit slips. If that was a Hanover National Bank note I could not say that we charged up the Hanover National bank with that amount before my letter had even gotten to New York.

I wrote the letter on the 14th or 15th. I don't think that was the first letter. The first letter would have been before that, because nothing is said in this about discounts or interest or anything.

188 That is only part of the correspondence. It is possible that is the first letter I had written in reference to the Sayre and Clark note. I had nothing to do with the charging up or making the entries on the books at all.

And thereupon the defendants introduced HENRY L. DENISON, who, being first duly sworn, testified in substance that he is a stenographer and typewriter, and that he was engaged to and did report the trial of the case of The United States *vs.* William H. Cochran and Robert Sayre, which was tried in this court at the May term thereof and on the 7th day of that month; that the short-hand notes of the testimony of Charles W. Thomas, a witness for the Government in that case, shows that he was there asked the following question:

Q. And you made out and swore to all the reports of the bank?

To which he answered:

A. I swore to all the reports; I helped make them out.

The witness further testified that his report of the trial of the said case was correct.

And thereupon defendants rested.

The foregoing was all the testimony introduced at the trial of said cause.

And thereupon the court instructed the jury as follows:

In the District Court of the United States for the District of Colorado.

189 UNITED STATES } Oral Charge to Jury.
vs.
W. H. COCHRAN and R. H. SAYRE. }

JUNE 6TH, 1894.

HALLETT, *J.*:

Section 5211 of the Revised Statutes of the United States provides that "every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association and attested by the signature of at least three of the directors. Each such report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted to the comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the comptroller shall be published in a newspaper published in the place where such association is established, or, if there is no newspaper published in the place, then in the one published nearest thereto in the same county, at the expense of the association, and such proof of publication shall be furnished as may be required by the comptroller. The comptroller shall also have power to call for

special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition."

That is the section regulating the manner of furnishing
190 these reports to the comptroller, and the purpose of the statute is to enable the comptroller to exercise supervision over these banks to see that they are properly conducted.

Section 5209, on which the indictment here was founded, provides that "every president, director, cashier, teller, clerk, or agent of and association" (I omit some parts which are not pertinent to the questions here presented) "who makes any false entry in any book, report, or statement of the association with intent in either case to defraud the association or any other company, body politic or corporate, or any individual person or to deceive any officer of the association or any agent appointed to examine the affairs of any such association, and every person who, with like intent, aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years nor more than ten."

In the indictments, three of them, which were consolidated for this trial, five reports are mentioned. On examination of these reports it was thought necessary to restrict the number for your consideration to one, that of the thirtieth day of September, 1892, and that because it was written by the prisoner, Robert H. Sayre, and bears the name of Mr. Cochran as one of the directors who attested it. The other reports were written by another Sayre, who was a clerk in the bank, and in the view we have of the law they
191 cannot be received under this indictment, so that your inquiry is restricted to the matters charged to have been falsely entered in this report, and the false entries which the court conceives to be properly charged in the indictment in respect to the report of the 30th of September, 1892, are found in the first and sixth counts of the indictment No. 960.

In the first count it is charged that Sayre, being cashier or assistant cashier of the First National Bank of Del Norte, and Cockran, being president, did make, in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, to the Comptroller of the Currency, in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry, under the head of liabilities, in said report numbered 19, which said entry was then and there in words and figures following—that is to say:

"19. Liabilities other than those above stated, none."

You will find this entry, with the number attached, in the report, as here specified, and with the addition opposite, in the same line, written with pen, the word "none."

And then the pleader proceeds in this count to show in what manner the entry was false. In that respect he avers that the entry was false in this, that the said association was then and there in-

debted and liable to the Hanover National Bank of New
192 York City in the sum of five thousand dollars, evidenced by a certain promissory note executed by the said Robert H. Sayre and one A. H. Clark and payment thereof guaranteed by said association to the said Hanover National Bank of New York City, and as the said Robert H. Sayre then and there well knew.

That is the note which has been given in evidence before you and which has been discussed by counsel in your hearing, and there seems to be a considerable difference of opinion between the counsel as to the character of this instrument in its relations to the First National Bank of Del Norte, as to whether it was a bill or note rediscounted or a bill or note payable by the bank or one upon which there was any liability which should appear upon the books of the bank and in this report, and upon that point there is not much room for difference of opinion. If, as I understood Mr. Cochran to say, this note at the time it was given by Sayre and Clark was immediately discounted by the First National bank and the amount paid to Sayre by giving him credit upon the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan, and the subsequent transaction with the Hanover National bank, by which this note was transferred to that bank upon the guaranty of the First National Bank of Del Norte, was a rediscount of that note to that bank, and if the facts are as thus stated the note should have appeared upon this statement among note- and bills rediscounted. There is a con-
193 siderable amount stated here as applicable to that item, forty-one thousand one hundred and ten dollars, but I believe it is not claimed that this note was comprehended in that amount or that there is any statement in this report whatever concerning it.

On the other hand, if the fact is not as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National bank and then sold to that bank upon the credit of Sayre and Clark and the First National bank of Del Norte, all parties were makers of the note; they were makers of the note notwithstanding the guaranty put upon the back of the note, because it is a rule of law that if several persons execute a note at one and the same time, with a view to give to those who appear to be makers of the note credit with the payee or the person to whom it is delivered, they shall all be regarded as makers, and this notwithstanding the fact that one or more of such persons puts his names upon the back of the note instead of the front or at the foot of the note. In that view the bill or note would be one which would properly appear in this report under the head of bills payable, so that we may say that in either case, whether the note was discounted by the bank of Del Norte by paying to Sayre the amount for which it was given at the time it was executed and afterwards sold by that bank to the Hanover bank or whether the transaction was at first a sale to the Hanover bank with all the signatures upon it, that it should have appeared in one or the other of

194 these places, in 17 or 18—that is, No. 17 or 18 of the items making up the liabilities of the bank as stated in this report.

The pleader in setting it forth seems to have been in doubt as to whether it should be called one thing or another, and so he assumed that it was one which should have been mentioned under the head of liabilities other than those above stated, and I think that he could reasonably do so, and that he may charge that the entry was not true, as he has done, if there be an omission of the note in all of the paragraphs which relate to the liabilities of the First National Bank of Del Norte, so that we have no difficulty in saying that this is a liability which ought to have had a place among the liabilities of the First National Bank of Del Norte as stated in this report. It seemed to be assumed by counsel and by the witnesses on the stand that because it was paper which was not due that it would not have the character of a liability of the bank, and that because the bank appeared on the paper as a guarantor that therefore it was one which it was necessary to mention in the report; but I do not think that can be a correct assumption. As I have already explained to you, it was a note which should either have appeared as a rediscount or as a note payable by the bank if the facts were to be truly stated.

Further on in the indictment it is said that the false entry was then and there feloniously made as aforesaid with the felonious intent then and there on the part of him, the said Robert H.

195 Sayre, to injure and defraud said association and certain persons to the said jurors unknown, and to deceive any officer of said association and any agent appointed by the Comptroller of the Currency to examine the affairs of said association."

And there is no doubt but that intent must exist in order to make the party liable under this statute—that is to say, if the omission was ignorantly made, if it was omitted merely out of stupidity and because the parties did not understand what was required of them, there is no offence under the statute. The statute relates to intentional wrong-doing. The intent must have been, as laid in the indictment, to mislead and deceive some one of these parties, either some of the officers of the bank or an officer of the Government appointed to examine into the affairs of the bank.

In other words, it is said that this note was omitted from the books of the bank also. The omission must have been in order that the fact of the existence of this liability on the part of the bank should not come to the knowledge or notice of the agents appointed by the comptroller to examine the bank or of some person connected with the Government or of some person interested in the bank. There must have been the element of concealment in it. So that you must find, not only the fact that there was an omission to make the proper entry, but that it was with an intent to conceal the fact from somebody who was concerned in the bank or concerned in overseeing it and supervising its operation and the conduct of its business.

196 I should say further, before we proceed to the sixth count, that the concluding charge in this count is that William H.

Cockran, being then and there president of said national banking association as aforesaid, and before the said offence, as hereinbefore set forth, was committed, in the firm aforesaid, did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offence and misdemeanor in the manner and form aforesaid.

We hold this report to be good evidence against Mr. Sayre, upon the ground that he filled it out—he made it; and it stands upon the point that he made it and that the failure to put in this item was intentional.

Now, as to Cockran, it must appear in addition that he knew of this and aided and abetted in it. It may be that his signature to the report as an attesting witness is evidence sufficient to your minds of that fact, but that is a question for your consideration, and for you to determine whether the omission was within his knowledge and approval.

As I said to you before, it seems that there was no entry in the books of this note. The note and everything connected with it was entirely omitted from the records of the bank from beginning to end; so that it would seem that the omission prevailing at all times must have been with the knowledge of all officers of the bank, or at least that would be a just inference; but with what intent
197 this was done, that is the important matter—whether there was an intent to cover up and conceal the liabilities of the bank and this liability in particular from those who were concerned in the bank and the officers of the Government who might have supervision of it.

The sixth count of this indictment charges that Sayre, being assistant cashier, made the report—this same report—to the Comptroller of the Currency, and under the head of loans and discounts in said report, which said entry was then and there in the words and figures following—that is to say: "Loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers." Then the form of the entry is given with the word "none" written in each place, which said entry, so as aforesaid made in said report, then and there purported to show and did in substance and effect indicate and declare that said association had not made any loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit, due from State and private banks and bankers," and then the court proceeds to charge that there was at that time due from the Miners' & Merchants' Exchange Bank of Creede a sum in excess of five thousand dollars, to wit, the sum of twenty-five thousand dollars, which should have appeared in this entry. In other words, that the amount due from the Miners' & Merchants' Exchange bank should have appeared here in place of the word "none."

198 Now, that depends upon whether the sum that was due from the Miners' & Merchants' Exchange bank was in fact a loan.

Section 5200 provides that "the total liabilities to any association

of any person or any company, corporation or firm, for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association, actually paid in."

And it is conceded that there was a note of five thousand dollars due from this bank, in addition to the sum due upon account, which has been called, and properly so, I think, an overdraft; and upon that I am of the opinion that there was nothing to require that the overdraft would be entered in the place specified as the amounts due under section 5200 of the Revised Statutes. An overdraft is not technically a loan; there are several points in which it may be distinguished from a loan; but it does not follow the ordinary definition of that term. We understand by a loan a sum which is given for a specified time or payable upon demand, and in which the idea of repayment at a time specified or upon demand is distinctly involved, and an overdraft is something different from that. It ordinarily assumes that the person overdrawing will replace it immediately upon notice of its existence; that the overdraft has been made by some mistake or with the understanding that funds are in transit to meet the amount, or something of that nature.

It is extremely doubtful, upon what appears in these
199 reports, whether this overdraft was in fact entered in the proper place. It would seem to me that an amount due from State and private banks and bankers, as here indicated, should represent money on deposit with the State and private banks and bankers, and the more so as there is in these reports some items which would represent exchanges between banks, as "checks and other items, see schedule," "exchanges for clearing-house," and the like; but, whatever the truth may be about that, we can only charge the defendants here upon the matter as presented in the indictment, and an omission with which they are charged in this count is not in stating this account in the blank on the back of the report, which appears under the heading "loans exceeding the limit prescribed by section 5200 of the Revised Statutes:" and, as I said to you before, it seems to me that defendants were not required to specify and set down this amount in that blank. Whether they were required to put it in the item of overdrafts or where they did in fact put it is not a question material to be considered; we only consider whether it ought to have been put in the place stated in the indictment and in the blank indicated on the back of the indictment, so that substantially what you are to inquire about is the matter presented in the first count of this indictment No. 960, and which relates to the note given by Sayre and Clark to the First National Bank of Del Norte and to the Hanover National Bank of New York.

There seems to be no question that this was omitted from the
report, and the question is whether such omission amounts
200 to a false entry—that is, whether it was made with the intent specified in this statute and in the indictment. That is the question for your consideration. If it was so omitted by the defendant Sayre he may be guilty as charged in this indictment, and

if it was done with the aid, counsel, and assistance of Cockran he may be as guilty as Sayre himself.

Now, these matters are to be established in your minds beyond reasonable doubt, and upon that subject as to what is a reasonable doubt, which should be heeded by the jury in a trial of this kind, I read an instruction prepared by defendants' counsel:

"The term reasonable doubt, as applied in the administration of criminal law, is an honest and substantial misgiving, generated by insufficiency of proof, an insufficiency which fails to convince your judgment and conscience and satisfy your reason as to the guilt of the accused. If the whole of the evidence, when carefully examined and weighed and compared, produces in your mind a state of conviction or belief of the defendants' guilt, such a conviction as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you are free from any reasonable doubt and should find in accordance with that conviction and belief. If the proof leaves your mind in such a state of doubt and uncertainty as to the guilt of the accused as would deter and prevent a prudent man from acting in matters of great importance to himself, there exists a reasonable doubt, and the defendants should have the benefit of it."

You will have this report with you of September 30th, and I do not know that anything else will be necessary for your use.

And thereupon defendants, by their counsel, excepted to that part of the said instruction which read as follows:

201 "If, as I understood Mr. Cockran to say, that note at the time it was given by Sayre and Clark was immediately discounted by the First National bank and the amount paid to Sayre by giving him credit on the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan, and the subsequent transaction with the Hanover National bank, by which this note was transferred to that bank upon the guaranty of the First National Bank of Del Norte, was a rediscount of that note to that bank, and if the facts are as thus stated the note should have appeared upon this statement among notes and bills rediscounted."

And the defendants then and there also excepted to the following portion of the said instruction:

"On the other hand, if the fact is not as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National bank and then sold to that bank upon the credit of Sayre and Clark and the First National Bank of Del Norte, all parties were makers of the note. They were the makers of the note notwithstanding the guaranty put on the back of the note, because it is a rule of law that if several persons execute a note at one and the same time, with a view to give those who appear to be makers of the note credit with the payee or the person to whom it is delivered, they shall all be regarded as makers, and this, notwithstanding the fact that one or more of such persons, instead of the front or at the foot of the note."

And the defendants, by their counsel, at the time of giving the said instruction also excepted to the following part of said instruction:

"In that view the bill or note would be one which would properly appear in this report under the head of bills payable, so that we may say that in either case, whether the note was discounted by the bank of Del Norte, by paying to Sayre the amount for which it was given at the time it was executed and afterwards sold by that
202 bank to the Hanover bank or whether the transaction was first a sale to the Hanover National bank with all the signatures upon it that it should have appeared in one or the other of these places in 17 or 18, that is No. 17 or 18 of the items making up the liabilities of the bank as stated in this report.

The pleader in setting it forth seems to have been in doubt as to whether it should be called one thing or another, and so he assumed that it was one which should have been mentioned under the head of liabilities, other than those above stated; and I think he could reasonably do so, and that he may charge that the entry is not true as he has done."

And the defendants, by their counsel, also excepted at the time of the giving of said instruction to the following part thereof:

"It seemed to be assumed by counsel and by the witnesses on the stand that because it was paper which was not due that it would not have the character of the liability of the bank, and that because the bank appeared upon the paper as a guarantor, that therefore it was one which was unnecessary to mention in the report, but I do not think that can be a correct assumption."

The defendants, by their counsel, also at the time of the giving of the said instruction excepted to the following part thereof:

"This note was omitted from the books of the bank also. The omission must have been in order that the fact of the existence of this liability on the part of the bank should not come to the knowledge or notice of the agents appointed by the comptroller to examine the bank, or of some person connected with the Government, or of some person interested in the bank. There must have been the element of concealment in it, so that you must find not only the fact that there was an omission to make the proper entry, but that it was with the intent to conceal the fact from somebody who was concerned in the bank or concerned in overseeing it."

And the defendants, by their counsel, at the time of giving said instruction also excepted to the following part thereof:

"It seems there was no entry in the books of this note; the note and everything connected with it was entirely omitted from
203 the records of the bank from beginning to end, so that it would seem that the omission prevailing at all times must have been with the knowledge of all officers of the bank, or at least that be a just inference."

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instruction:

"You are instructed that a false entry in a report of a national bank officer or director to the Comptroller of the Currency within

the meaning of the Revised Statutes, sec. 5209, is not merely an incorrect entry made through inadvertence, negligence, or mistake, but is an entry known to the maker to be untrue and incorrect and intentionally entered while so knowing its false and untrue character. The intention to deceive is essential to constitute a violation of the statute, and you must be satisfied beyond a reasonable doubt from the evidence—

First. That the defendants, or one of them, made a false entry in said report; and

Second. That it was made with the intention of misleading or deceiving the Comptroller of the Currency or some other person or persons alleged in the said indictment.

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"You are further instructed that a national bank is not required to conform the headings of the various accounts of its books to any prescribed names, nor to the names stated in the form of report prescribed by the comptroller; and, therefore, when a report is called for, if the person making it enters under the headings in the prescribed form a statement of the bank's condition which is true in respect to the headings in said form, he has fulfilled the demands of the law."

204 But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"You are further instructed, as a matter of law, that an overdraft is not a loan or discount, although it is an item of indebtedness due to the bank. Loans and discounts refer to credits due to the bank under obligations running for a definite time and amount, while overdrafts are amounts due from depositors to the bank immediately payable and subject to variations from day to day. Hence, you are instructed that the account due from the Miners' & Merchants' Exchange Bank of Creede to the First National Bank of Del Norte was not such a loan or discount as required the same to be stated in said report under the head of loans and discounts in excess of the limit fixed by law."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"You are further instructed that if you believe from the evidence that on the 30th day of September, 1892, a certain note executed by the defendant Sayre and A. H. Clark to the First National bank and by the First National bank guaranteed to the Hanover National Bank of New York for the benefit of said Sayre, but which at the time said report was made was not due, and that because the same was a guarantee of the said First National Bank of Del Norte to the

said Hanover National bank it was not placed upon the books of the Del Norte bank, then you are instructed that the said item had no place in the report of the said First National Bank of Del Norte."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the
205 court to give to the jury the following instructions:

"You are further instructed that this indictment is for the making of false entries in a report to the comptroller, and not for false entries in the books of said bank; and if you believe from the evidence that the said item of $5,000 did not appear upon the books of said bank, then you are instructed that its entry upon the report, for the falsity of which the defendants are indicted, would have been a false representation of the condition of said bank, and the said defendants had no right or authority to place the same thereon.

If you believe from the evidence that the said defendants honestly believed the said $5,000 note to have no proper part or place among the business transaction- of said bank because the same consisted simply of a guarantee of the said bank and was not a rediscount of its paper, and that the proceeds of said note so guaranteed went to the said Sayre and not to the said bank, and, so honestly believing, did not regard the same as an item properly appearing upon the books of said bank and left the same off of said books, then you are instructed that there was no intention to deceive or mislead any officer or other person, and you should render a verdict of not guilty."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"If you believe from the evidence that the defendant Sayre in making said report placed the amount due as an overdraft from the Creede bank to the First National bank under the heading of amounts due from State and private banks and bankers instead of among the overdrafts of individuals, he believing the same properly to belong to said heading, then you are instructed that the defendant should be acquitted."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

206 And thereupon the defendants, by their counsel, asked the court to give to the jury the following instruction:

"You are further instructed that the defendants are presumed to be innocent until the contrary appears beyond a reasonable doubt, and that every reasonable doubt or presumption arising from the evidence must be construed in their favor."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"You are further instructed that unless you believe beyond a reasonable doubt from the evidence that the defendant Sayre know-

ingly and wilfully falsified the report of September 30th, 1892, as charged in the indictment, you must acquit both defendants; and, although you should believe that the defendant Sayre did so falsify said report, yet, if you should fail to fully believe beyond a reasonable doubt from the evidence that the said Cockran aided and abetted the said Sayre in so falsely making said entries with the intention of deceiving and misleading as charged in the indictment, you cannot as to said Cockran render a verdict of guilty."

But the court refused to give said instruction; to which refusal the defendants, by their counsel, then and there excepted.

And thereupon the defendants, by their counsel, asked the court to give to the jury the following instructions:

"You are further instructed that, inasmuch as the said report is not verified by either of the defendants, only one of whom has attested the same as correct, and inasmuch as it appears from the said report that the same was verified by Charles W. Thomas, cashier, and the said Charles W. Thomas not having been indicted for making said false entries, neither of these defendants can be convicted."

But the court refused to give said instruction; to which
207 refusal the defendants, by their counsel, excepted.

And thereupon the jury brought in a verdict finding the said defendants guilty, and the said verdict is in words and figures as follows—that is to say:

We find the defendants guilty as charged in the first count of the indictment originally numbered 960.

And thereupon the defendants, by their counsel, filed a motion for a new trial; which said motion is in words and figures following—that is to say:

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the District Court of the United States in and for said District.

UNITED STATES }
vs. } Motion for New Trial.
W. H. COCKRAN and R. H. SAYRE. }

Come now the above-named defendants, by Edward F. Richardson and Charles S. Thomas, their attorneys, and move the court to set aside the verdict of the jury in this cause and to award the defendants a new trial of the issues herein for the following reasons:

First. The court erred in permitting the report of the condition of the First National Bank of Del Norte on the 30th of September, 1892, to be admitted in evidence under the averments of said indictment.

208 Second. The court erred in permitting the Government to inquire into the truth or falsity of any items or any of the contents of said report other than those the false making or entry of which formed the subject-matter of the charge in said indictment or any count thereof.

Third. The court erred in permitting the Government to trace back any of the items forming the statement of overdrafts as appeared in said report.

Fourth. The court erred in refusing to permit the defendant to show that the last report made by said bank and made subsequent to the closing of its doors was made in the same manner as that of September 30th, 1892, and made under the direction of James B. Lazear, the bank examiner of the United States, then in charge of its affairs.

Fifth. The court erred in admitting improper testimony for prosecution over the objection of the defendants.

Sixth. The court erred in excluding proper testimony offered by the defendants and objected to by the prosecution.

Seventh. Because the said verdict is against the evidence and the weight of the evidence.

Eighth. Because the said verdict is contrary to the law.

Ninth. Because the said verdict is opposed to the instructions of the court.

Tenth. Because the court erred in instructing the jury as follows:

209 "If, as I understood Mr. Cockran to say, this note, at the time it was given by Sayre and Clark, was immediately discounted by the First National bank, and the amount paid to Sayre by giving him credit upon the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan, and the subsequent transaction with the Hanover National bank by which this note was transferred to that bank upon the guaranty of the First National Bank of Del Norte was a rediscount of that note to that bank, and if the facts are thus stated the note should have appeared upon this statement among notes and bills rediscounted."

Eleventh. The court erred in instructing the jury as follows:

"On the other hand, if the fact is not, as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National bank and then sold by that bank upon the credit of Sayre and Clark and the First National Bank of Del Norte, all parties were makers of the note. They were makers of the note notwithstanding the guaranty put upon the back of the note, because it is a rule of law that if several persons execute a note at one and the same time with a view to give to those who appear to be the makers of the note credit with the payee or the person to whom it is delivered they shall be regarded as makers, and this notwithstanding the fact that one or more of said persons puts his name upon the back of the note instead of the front or at the foot of the note. In that view the bill or note would be one which would properly appear in this report under the head of bills payable, so that we may say that in either case, whether the note was discounted by the Bank of Del Norte by paying Sayre the amount for which it was given at the time it was executed and after-

210 wards sold by that bank to the Hanover bank or whether

the transaction was first a sale to the Hanover bank, with all the signatures upon it, that it should have appeared in one or the other of these places, in 17 or 18—that is, number 17 or 18 of the items making up the liabilities of the bank as stated in this report."

Twelfth. The court erred in giving the jury the following instruction:

"The pleader in setting it forth seems to have been in doubt as to whether it should have been called one thing or another, and so he assumed that it was one which should have been mentioned under the head of liabilities other than those above stated, and I think he could reasonably do so, and that he may charge that the entry was not true, as he has done. If there be any omission of the note in all of the paragraphs which relate to the liabilities of the First National Bank of Del Norte, so that we have no difficulty in saying that this is a liability which ought to have had a place among the liabilities of the First National Bank of Del Norte, as stated in the report."

Thirteenth. The court erred in giving to the jury the following instruction:

"It seemed to be assumed by counsel and by the witnesses on the stand that because it was paper which was not due that it would not have the character of a liability of the bank, and that because the bank appeared upon the paper as a guarantor that therefore it was one which it was unnecessary to mention in the report; but I do not think that can be a correct assumption."

Fourteenth. The court erred in giving to the jury the following instruction:

"It seems that there was no entry in the books of this note; the note and everything connected with it was entirely omitted from the records of the bank, from beginning to end, so that it would seem that the omission prevailing at all times must have been with the knowledge of all officers of the bank, or at least that would be a just inference."

Fifteenth. The court erred in refusing to give to the jury instruction numbered 3, prayed for by the defendants.

Sixteenth. The court erred in refusing to give to the jury instruction numbered 4, requested by the defendants.

211 Seventeenth. The court erred in refusing to give to the jury instruction numbered 6, which was requested by the defendants.

Eighteenth. The court erred in refusing to give to the jury instruction numbered 7, requested by the defendants.

Nineteenth. The court erred in refusing to give to the jury instruction numbered 10, requested by the defendants.

Twentieth. The court erred in refusing to give to the jury instruction numbered 11, requested by the defendants.

21st. Because there is error in the record and proceedings in the trial of this cause; because of other errors and irregularities appearing upon the face of the record in said cause.

Wherefore the defendants respectfully pray this honorable court

to set aside the said verdict and grant the defendants a new trial in said cause in all respects and to every extent as though the same had not been heretofore tried.

——— ———,
Attorneys for Defendants.

But the court overruled the said motion and refused to grant a new trial to the said defendants; to which action of the court the defendants, by their counsel, then and there excepted.

And thereupon the court passed judgment and sentence upon said defendants and each of them that they be imprisoned in the penitentiary at Joliet, Illinois, for the period of five years each from the date thereof, to wit, on the — day of July, A. D. 1894; to
212 which judgment and sentence the defendants, by their counsel, then and there excepted.

And forasmuch as the matters and things herein set forth do not fully appear of record, the defendants tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of said court and thereby become a part of the record and proceedings in said cause according to the statute in such case made and provided, which is accordingly done this 22nd day of August, A. D. 1894.

(Signed) MOSES HALLETT,
Dist. Judge. [SEAL.]

(Endorsed:) 959. U. S. district court. United States *vs.* W. H. Cochran and R. H. Sayre. Bill of exceptions. Filed Aug. 22, 1894. F. W. Tupper, clerk.

213 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the District Court.

UNITED STATES OF AMERICA
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE. } Stipulation.

It is hereby stipulated and agreed by and between H. V. Johnson, district attorney of the United States for the district of Colorado, and E. F. Richardson and C. S. Thomas, attorneys for defendants, that the foregoing and annexed supplemental bill of exceptions may be signed and sealed by the judge of the district court as of the date of the original bill of exceptions.

HENRY V. JOHNSON,
District Attorney.
C. S. THOMAS,
E. F. RICHARDSON,
Attorneys for Defendants.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the District Court.

UNITED STATES OF AMERICA }
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE. }

Be it remembered that in the above-entitled cause the de-
214 fendants filed motions to quash the indictments preferred against them; which said motions were in words and figures as follows:

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the District Court of the United States.

UNITED STATES OF AMERICA, Plaintiff. }
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE, Defendants. }

Come now the above-named defendants and withdraw their plea of not guilty as to the first, second, third, fourth, fifth, tenth, eleventh, and twelfth counts of the indictment heretofore entered in the above-entitled cause and move to quash said counts by leave of the court first had and obtained, and for the grounds of their motion allege and state:

First. That the first count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Second. That the second count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Third. That the third count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Fourth. That the fourth count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

Fifth. That the fifth count of said indictment does not set forth any offense cognizable by this court or any other court under the statutes of the United States or otherwise or at all.

215 Sixth. That the tenth count of said indictment is void for uncertainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Seventh. That the eleventh count of said indictment is void for uncertainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Eighth. That the twelfth count of said indictment is void for un-

certainty in this, to wit, that it does not appear by said count who the persons were who received a greater rate of interest than eight per centum upon deposits.

Wherefore the defendants ask that said counts may be quashed.

E. F. RICHARDSON,
Attorney for Defendants.

That said motions came on to be heard on the 10th day of January, 1894, and the court did sustain said motion as to 10th, 11th, and 12th counts, and did overrule the same as to all other counts; to which action of the court in overruling said motion as to the aforesaid counts the defendants, by their counsel, then and there excepted.

And be it further remembered that when the court overruled the motion for a new trial the defendants interposed a motion in arrest of judgment; which said motion was in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the United States Circuit Court.

216 UNITED STATES OF AMERICA *vs.* ROBERT H. SAYRE and WILLIAM H. COCKRAN, Defendants. } No. 961. Motion in Arrest of Judgment.

Come now the above-named defendants by their attorneys, Charles S. Thomas and E. F. Richardson, and move the court for an order in arrest of judgment in the above-entitled cause, and for the grounds of their motion allege and state:

First. That the indictment in said cause is insufficient to sustain a judgment for conviction, in that the same was founded upon an alleged guaranty of the First National Bank of Del Norte to the Hanover National Bank of New York of a note whereon the defendant Sayre and one A. H. Clark were the makers and the First National Bank of Del Norte is alleged to be the guarantor, such guaranty constituting in law no liability of the bank whatever.

Second. That the indictment is insufficient in its averments to sustain any conviction, in that the act complained of is not sufficiently set out to apprise the defendants or either of them as to the violation which they are called upon to defend.

Third. That the indictment is insufficient to sustain a conviction by reason of the fact that the report purporting to have been made under section 5211 of the Revised Statutes is not set out either in substance or in its effect.

Fourth. That the indictment is insufficient to sustain a conviction, in that the report alleged to have been made under section 5211 of the Revised Statutes is not claimed by said indictment to

have been verified by the president or the cashier of the First National Bank of Del Norte or attested by its directors, the allegation being, in effect, that said report was one made in accordance with law.

Fifth. That the evidence introduced varies from the terms of said indictment, in that the report of September 30th is one made by the association pursuant to section 5211 of the Revised Statutes, when there is no allegation as to who made said report.

217 Sixth. That the evidence is insufficient to support the indictment, in that there is no proof whatever that said First National Bank of Del Norte ever at any time guaranteed the payment of said note whereon the said bank of Del Norte is alleged to be liable.

Seventh. That the evidence is insufficient to support the allegations of the indictment that the note complained of was ever at any time a liability of the bank of Del Norte as a guaranty.

C. S. THOMAS,
E. F. RICHARDSON,
Attorneys for Defendants.

That said motion in arrest came on to be heard on the 24th day of July, 1894, and the court did on the said 24th day of July, 1894, overrule said motion; to which action of the court the defendants, by their counsel, then and there duly excepted.

And forasmuch as the matters and things aforesaid do not fully appear of record the said defendants tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of the district court, which is accordingly done this 10th day of September, A. D. 1894, as of the 24 day of July, 1894.

MOSES HALLETT, *Judge.*

(Indorsed:) No. 959. District court. United States of America, pl'ff, *vs.* William H. Cochran *et al.*, def'ts. Stipulation & bill of exceptions. Filed Sept. 10, 1894. F. W. Tupper, clerk.

218. UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the District Court within and for the District of Colorado.

UNITED STATES OF AMERICA
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE. } Assignment of Errors.

Come now the above-named defendants, William H. Cochran and Robert H. Sayre, and say that in the record and proceedings in the above-entitled cause there is manifest error to their prejudice in the following particulars, to wit:

First. The court erred in overruling their motion to quash the indictments filed against them, and especially in overruling said motion as to the first count in the indictment in the case numbered originally 960.

Second. The court erred in permitting the attorney for the United States to ask the witness Charles W. Thomas the following question: "Had you ever had any experience in a bank or the business of a bank before you came to Colorado?" and in permitting the said *defendant* Thomas to answer the same as follows: "I was never in a bank. After I returned from Colorado I went in a bank, about the first of January, 1890, in Portsmouth."

Third. The court erred in permitting the government of attorney
219 the United States to ask the witness Thomas the following question: "When the comptroller would call on the bank for statements what was your habit as to taking any part in the getting up of those statements?" and in permitting the following answer to be given in evidence: "Well, I never made any statements."

Fourth. The court erred in permitting the attorney for the United States to ask the witness Thomas the following question: "Now, Mr. Thomas, was that note what you call in its present condition a rediscounted note?" and in permitting the *defendant* Thomas to give the following answer and the same to go in evidence: "Yes, sir; I say it is payable to the First National Bank of Del Norte, and it is rediscounted, too. I don't say what bank it is rediscounted to; it says for value received, hereby guaranteeing the within note at maturity," etc.

Fifth. The court erred in permitting the attorney for the United States to introduce in evidence the report of the First National Bank of Del Norte to the Comptroller of the Currency, dated September 30th, 1892, the same being referred to and marked in the bill of exceptions as Exhibit A.

Sixth. The court erred in refusing to permit counsel for the defendants to ask the witness Thomas the following question: "Didn't you borrow $5,000 and give your note?" and in refusing to permit the defendants to show that the witness had borrowed
$5,000 on his own account in the bank, and that his wife had
220 borrowed the same amount, and that the witness was familiar with the conditions of the bank.

Seventh. The court erred in refusing to permit counsel for the defendant to ask the witness Thomas on cross-examination the following question: "Should the same item appear more than once in that statement, what would be the result?"

Eighth. The court erred in permitting the counsel for the Government to ask the witness Logan the following question: "Is that note the renewal of other notes or not?" and in permitting the witness to answer the same as follows:

"This note is a renewal of a note that matured on August 21st, 1892, made by the same parties, and guaranteed and endorsed by the same bank and for the same amount."

Ninth. The court erred in permitting the witness Logan to testify as follows:

"That he did not have the other notes which had been sent to the First National Bank of Del Norte for collection; were charged

to their account when they became due, and the proceeds of that note and the proceeds of another renewal credited to the account of the First National Bank of Del Norte. By proceeds is meant the amount of the note less the interest for the time it had to run at the rate of six per cent. per annum. The note of which this is a renewal was itself a renewal of another note."

Tenth. The court erred in permitting the Government to ask the witness Logan the following question:

"So that upon this note, the two original notes of which you have spoken, the First National Bank was indebted to your
221 bank from December 18th, 1891, up to the present time?"

and in permitting the witness Logan to answer the same as follows: "Yes, sir."

Eleventh. The court erred in permitting the witness J. B. Lazear to testify that when the circular sent to the Hanover National Bank of New York *was* by a bank examiner was returned it disclosed that the Hanover bank held a discount of $5,000 for the First National Bank of Del Norte.

Twelfth. The court erred in permitting the counsel for the Government to ask the witness Lazear the following question:

"What was the amount due as an overdraft from the Creede bank to the First National Bank of Del Norte when you took possession of it as examiner?" and in permitting the witness Lazear to answer the same as follows: "It was about $22,500 on overdraft, $5,000 additional on note, making about $28,000."

Thirteenth. The court erred in refusing to permit counsel for the defendants to ask the witness Lazear on cross-examination the following question:

"Whether it is a liability or not, would you call it a liability until I had failed to meet the obligation?"

Fourteenth. The court erred in refusing to instruct the jury to bring in a verdict for the defendants at the close of the case made by the Government.

Fifteenth. The court erred in permitting the counsel for the Government to ask the witness Sayre the following question:
222 "Now, will you turn to your individual ledger and show me of what that overdraft consisted?" and in permitting the witness Sayre, in answer to that question, to give in evidence the various items found in his testimony.

Sixteenth. The court erred in permitting the Government to ask the witness Sayre, upon cross-examination, the following question: "Now, why did you write the word "None" in there, Mr. Sayre? and in compelling the witness Sayre to answer said question, his answer being as follows:

"I wrote the word 'None' in there for the reason that I had not them secured, I suppose; none secured; none secured or unsecured. The drafts were all secured in a sense. Certainly they were all expected to be paid. That is what that means. They are only temporary; they might be blotted out the next day, as the book shows."

Seventeenth. The court erred in permitting the Government,

upon cross-examination, to ask the witness Sayre the following question:

"Under the head of 'secured' and 'unsecured,' Mr. Sayre, are not there lines here 'standing twelve months or over;' 'standing three months or over;' standing one month or over,' and then 'temporary'? and in compelling the witness Sayre to answer said question, his answer being as follows:

"Yes, sir; and I have written the whole of that $3,745.12 on the line 'temporary,' meaning that the overdrafts were only temporary and that they might be liquidated at any time by deposits. I understand this statement to say that if any of these overdrafts have been standing three, six, or twelve months I should put them on the line corresponding to those months. Some of these
223 overdrafts may have been standing one or three months. On close examination I should have put them there. If any one account should have been continued just the same for a month it would probably be gone above there, but I do not know that is the case. It would not be the same overdraft if it varied five cents."

Eighteenth. The court erred in permitting the Government, in its cross-examination of the witness Sayre concerning the overdraft of the San Louis Valley Company, to ask him the following question: "See if it continued as an overdraft for a month back?" and in permitting the witness to answer that "the account was alike for two days at a time, and on September 19th they got a deposit of $92.04."

Nineteenth. The court erred in permitting the same question in regard to the account of the Rio Grande Meat Company and E. F. Richardson.

Twentieth. The court erred in permitting the Government, by its counsel, to ask the witness Sayre, upon cross-examination the following question:

"Under the heads of loans and discounts under the schedule you have written the word 'none' opposite 'liabilities of directors, individual and firm,' 'as payers, none.' Why did you write the word none there?" and in permitting the witness Sayre to give in evidence his explanation and stating as the reason why that he supposed these amounts had been included in the title of bills payable and other items of the schedule, and that he supposed there were no liabilities to the bank on the 30th of September, 1892.

224 21st. The court erred in permitting the counsel for the Government to ask the witness Sayre, on cross-examination, the following question: "Did you have any bad debts as of September 30th?" and in permitting the witness Sayre to answer that he thought at that time they had none, although subsequent events had demonstrated that there probably were some.

22d. The court erred in refusing to permit the defendants to ask the witness Sayre the following question: "How did that report come to be made?" the same referring to the report made in December, 1892, and the court erred in refusing to permit the defendants to prove by the witness Sayre, in answer to that question, that at the time of making the report, which was made after the bank

had closed, that it was made under the counsel and direction of James B. Lazear, national bank examiner, and when it had been made it was turned over to him and was last seen by the officers of the bank in his possession, and that the report was identical in form and substance with that of September 30th, 1892.

23rd. The court erred in permitting counsel for the Government, upon cross-examination, to ask the witness Cochran the following question: "Now, can you explain why he wrote 'none' in there opposite liabilities of the directors of the bank?" and permitting to go in evidence the answers of the witness Cochran to that question, his answer being in substance that he did not write it and he presumed that Mr. Sayre had supposed there were no such liabilities.

225 24th. The court erred in giving to the jury the following instruction:

"If, as I understood Mr. Cochran to say, that note at the time it was given by Sayre and Clark was immediately discounted by the First National bank and the amount paid to Sayre by giving him credit on the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan, and the subsequent transaction with the Hanover National bank by which this note was transferred to that bank upon the guaranty of the First National Bank of Del Norte was a rediscount of that note to that bank, and if the facts are as thus stated the note should have appeared upon this statement among notes and bills rediscounted."

25th. The court erred in giving to the jury the following instruction:

"On the other hand, if the fact is not as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National bank, and then sold to that bank upon the credit of Sayre and Clark and the First National Bank of Del Norte, all parties were makers of the note; they were makers of the note notwithstanding the guaranty put on the back of the note, because it is a rule of law that if several persons execute a note at one and the same time, with a view to give those who appear to be makers of the note credit with the payee or the person to whom it is delivered, they shall all be regarded as makers, and this notwithstanding the fact that one or more of such persons —, instead of the front or at the foot of the note."

26th. The court erred in giving to the jury the following instruction:

"In that view the bill or note would be one which would properly appear in this report under the head of bills payable, so that
226 we may say that in either case, whether the note was discounted by the bank of Del Norte by paying to Sayre the amount for which it was given at the time it was executed and afterwards sold by that bank to the Hanover bank, or whether the transaction was first a sale to the Hanover National bank, with all the signatures upon it, that it should have appeared in one or the

other of these places, in 17 or 18—that is, No. 17 or 18 of the items making up the liabilities of the bank, as stated in this report. The pleader in setting it forth seems to have been in doubt as to whether it should be called one thing or another, and so he assumed that it was one which should have been mentioned under the head of liabilities other than those above stated; and I think he could reasonably do so, and that he may charge that the entry was not true, as he has done."

27th. The court erred in giving to the jury the following instruction:

"It seemed to be assumed by counsel and by the witnesses on the stand that because it was paper which was not due that it would not have the character of a liability of the bank, and that because the bank appeared upon the paper as a guarantor that therefore it was one which was unnecessary to mention in the report; but I do not think that can be a correct assumption."

28th. The court erred in giving to the jury the following instruction:

"This note was omitted from the books of the bank also; the omission must have been in order that the fact of the existence of this liability on the part of the bank should not come to the knowledge or notice of the agents appointed by the comptroller to examine the bank, or of some person connected with the Government or of some person interested in the bank. There must have been the element of concealment in it. So that you must find not only the fact that there was an omission to make the proper entry, but that it was with an intent to conceal the fact from somebody who was
227 concerned in the bank or concerned in overseeing it."

29th. The court erred in refusing to give to the jury the following instruction:

"It seems there was no entry in the books of this note; the note and everything connected with it was entirely omitted from the records of the bank from beginning to end; so that it would seem that the omission, prevailing at all times, must have been with the knowledge of all officers of the bank, or at least that would be a just inference."

30th. The court erred in refusing to instruct the jury as requested by the defendants as follows:

"You are instructed that a false entry in a report of a national bank officer or director to the Comptroller of the Currency, within the meaning of the Revised *States*, sec. 5209, is not merely an incorrect entry made through inadvertence, negligence, or mistake, but is an entry known to the maker to be untrue and incorrect, and intentionally entered while so knowing its false and untrue character. The intention to deceive is essential to constitute a violation of the statute, and you must be satisfied beyond a reasonable doubt from the evidence—

"First. That the defendants or one of them made a false entry in said report; and,

"Second. That it was made with the intention of misleading or

deceiving the Comptroller of the Currency or some other person or persons alleged in the said indictment."

31st. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed that a national bank is not required to conform the headings of the various accounts on its books to any prescribed names, nor to the names stated in the form
228 of report prescribed by the comptroller, and therefore when a report is called for if the person making it enters under the headings in the prescribed form a statement of the bank's condition which is true in respect to the headings in said form, he has fulfilled the demands of the law."

32nd. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed, as a matter of law, that an overdraft is not a loan or discount, although it is an item of indebtedness due to the bank. Loans and discounts refer to credits due to the bank under obligations running for a definite time and amount, while overdrafts are amounts due from depositors to the bank, immediately payable and subject to variation from day to day. Hence you are instructed that the account due from the Miners' & Merchants' Exchange Bank of Creede to the First National Bank of Del Norte was not such a loan or discount as required the same to be stated in said report under the head of loans and discounts in excess of the limit fixed by law."

33rd. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed that if you believe from the evidence that on the 30th day of September, 1892, a certain note executed by the defendant Sayre and A. H. Clark to the First National bank, and by the First National Bank guaranteed to the Hanover National Bank of New York for the benefit of said Sayre, but which at the time when said report was made was not due, and that because the same was a guarantee of the said First National Bank of Del Norte to the said Hanover National bank it was not placed upon the books of the Del Norte bank, then you are instructed that the said item had no place in the report of the said First National Bank of Del Norte."

34th. The court erred in refusing to give to the jury, at
229 the request of the defendants, the following instruction:

"You are further instructed that this indictment is for the making of false entries in a report to the comptroller and not for false entries in the books of said bank, and if you believe from the evidence that the said item of $5,000 did not appear upon the books of said bank, then you are instructed that its entry upon the report, for the falsity of which the defendants are indicted, would have been a false representation of the condition of said bank, and that the said defendants had no right or authority to place the same thereon.

"If you believe from the evidence that said defendants honestly believed the said $5,000 note to have no proper part or place among

the business transaction of said bank because the same consisted simply of a guarantee of the said bank and was not a rediscount of its paper, and that the proceeds of the said note so guaranteed went to the said Sayre and not to the said bank, and so honestly believing did not regard the same as an item properly appearing upon the books of said bank and left the same off of said books, then you are instructed that there was no intention to deceive or mislead any officer or other person and you should render a verdict of not guilty."

35th. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"If you believe from the evidence that the defendant Sayre, in making said report, placed the amount due as an overdraft from the Creede bank to the First National bank under the heading of amounts due from State and private banks and bankers instead of among the overdrafts of individuals, he believing the same properly to belong to said heading, then you are instructed that the defendants should be acquitted."

36th. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed that the defendants are presumed to be innocent until the contrary appears beyond a reasonable
230 doubt, and that every reasonable doubt or presumption arising from the evidence must be construed in their favor."

37th. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed that unless you believe, beyond a reasonable doubt, from the evidence that the defendant Sayre knowingly and wilfully falsified the report of September 30th, 1892, as charged in the indictment, you must acquit both defendants, and although you should believe that the defendant Sayre did so falsify said report, yet if you should fail to fully believe, beyond a reasonable doubt, from the evidence that the said Cochran aided and abetted the said Sayre in so falsely making said entries with the intention of deceiving and misleading, as charged in the indictment, you cannot as to said Cochran render a verdict of guilty."

38th. The court erred in refusing to give to the jury, at the request of the defendants, the following instruction:

"You are further instructed that inasmuch as the said report is not verified by either of the defendants, only one of whom has attested the same as correct, and inasmuch as it appears from the said report that the same was verified by Charles W. Thomas, cashier, and the said Charles W. Thomas not having been indicted for making said false entries, neither of these defendants can be convicted."

39th. The court erred in overruling the defendants' motion for a new trial.

40th. The court erred in overruling the defendants' motion in arrest of judgment.

41st. The court erred in sentencing the defendants and entering

judgment against them of imprisonment or any other judgment.

231 42nd. The court erred in failing to discharge the prisoners and releasing them upon the whole record and evidence in said cause.

43rd. And in divers other particulars the said court erred to the manifest injury and prejudice of these defendants.

Wherefore the said defendants pray that said judgment may be wholly reversed, set aside, and for naught held.

C. S. THOMAS,
E. F. RICHARDSON,
Attorneys for Defendants.

(Indorsed:) No. 959. District court. United States of America *vs.* William H. Cochran *et al.* Assignment of errors. Filed Sept. 21, 1894. F. W. Tupper, clerk. Thomas, Hartzell, Bryant & Lee, attorneys for defendants.

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

In the District Court within and for the District of Colorado.

UNITED STATES OF AMERICA }
vs.
WILLIAM H. COCHRAN and ROBERT H. SAYRE. }

232 To the honorable judges of the Supreme Court of the United States, the circuit and district courts for the district of Colorado, and each and every one thereof:

The defendants, William H. Cochran and Robert H. Sayre, herewith present to your honors a transcript of the record in the above-entitled cause, together with an assignment of errors, as provided by rule 35 of the Supreme Court of the United States, and pray that a writ of error may issue in the above-entitled cause; the same to be made a supersedeas upon the said defendants giving bond in such sum as your honors shall fix, and the said record may be transmitted to the Supreme Court of the United States, to be dealt with by said court according to law.

And your petitioners will ever pray, etc.

C. S. THOMAS,
E. F. RICHARDSON,
Attorneys for Defendants.

It is ordered that the citation and writ of error above prayed for may issue, and that upon the plaintiffs in error furnishing good & sufficient bond in the sum of five thousand dollars that said writ of error operate as a supersedeas.

MOSES HALLETT, *Judge.*

(Indorsed:) No. 959. District court. United States of America *vs.* William H. Cochran *et al.* Petition for writ of error.
233 Filed Sept. 21, 1894. F. W. Tupper, clerk. Thomas, Hartzell, Bryant & Lee, attorneys for defendants.

234 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

Know all men by these presents that we, Robert H. Sayre, as principal, and John W. Jemison and Lydia E. Wilson, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, to be paid to the said the United States of America; to which payment, well and truly to be made, we bond ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of September, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at the May term, A. D. 1894, of the district court of the United States for the district of Colorado, in a- indictment for making false entry in report of national b'k to Comptroller of the Currency, in violation — section 5209, Rev. Stats. U. S., pending in said court, wherein The United States of America was plaintiff and the said Robert H. Sayre above named was defendant, judgment of conviction was rendered against the said Robert H. Sayre, and he was sentenced to serve a certain term of five years in the penitentiary; and the said Robert H. Sayre having obtained a writ of error of the said court to reverse said judgment of conviction, and a citation directed to the United States of America, citing and admonishing it to be and appear in the Supreme Court of the United States on the first day of its next term, to wit, the 8th day of Octo-
235 ber, at Washington, D. C.:

Now, the condition of the above obligation is such that if the said Robert H. Sayre shall prosecute said writ to effect and abide by the decision of said supreme court thereof and attend at the next term of the district court of the United States for the district of Colorado, to be held in Denver, on the first Tuesday of November, and from day to day thereafter, and abide by the orders of said district court and submit to the judgment thereof, or to such judgment as the Supreme Court of the United States shall direct to be entered against said Robert H. Sayre, and answer all damages and costs if he shall fail to make good his said writ of error, then the above obligation to be void; else to remain in full force and effect.

ROBERT H. SAYRE.
JOHN W. JEMISON.
LYDIA E. WILSON.

Approved Sept. 26, 1894.
MOSES HALLETT, *Dist. Judge.*

(Indorsed:) 959. U. S. district court. United States *vs.* Robert H. Sayre. Supersedeas bond to Supreme Court, $5,000.00. Filed Sep. 27, 1894. F. W. Tupper, clerk.

236 UNITED STATES OF AMERICA, } ss.:
District of Colorado, }

Know all men by these presents that we, William H. Cochran, as principal, and John W. Jemison and William E. Shaw, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five thousand dollars, to be paid to the said the United States of America; to which payment, well and truly to be made, we bond ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of September, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at the May term, A. D. 1894, of the district court of the United States for the district of Colorado, in a- indictment for making false entry in report of a national bank to the Comptroller of the Currency, in violation of section 5209, Rev. Stats. U. S., pending in said court, wherein The United States of America was plaintiff and the said William H. Cochran above named was defendant, judgment of conviction was rendered against the said William H. Cochran, and he was sentenced to serve a certain term of five years in the penitentiary; and the said William H. Cochran having obtained a writ of error of the said court to reverse said judgment of conviction, and a citation directed to the United States of America, citing and admonishing it to be and appear in the Supreme Court of the United States on the first day of its next

237 term, to wit, the 8th day of October, at Washington, D. C.:

Now, the condition of the above obligation is such that if the said William H. Cochran shall prosecute said writ to effect and abide by the decision of said Supreme Court thereof and attend at the next term of the district court of the United States for the district of Colorado, to be held in Denver, on the first Tuesday of November and from day to day thereafter, and abide by the orders of said district court and submit to the judgment thereof, or to such judgment as the Supreme Court of the United States shall direct to be entered against said William H. Cochran, and answer all damages and costs if he shall fail to make good his said writ of error, then the above obligation to be void; else to remain in full force and effect.

WILLIAM H. COCHRAN.
JOHN W. JEMISON.
WILLIAM E. SHAW.

Approved Sept. 26, 1894.
MOSES HALLETT, *Dist Judge.*

(Indorsed:) 959. U. S. district court. United States *vs.* William H. Cochran. Supersedeas bond to Supreme Court, $5,000.00. Filed Sept. 27, 1894. F. W. Tupper, clerk.

238 UNITED STATES OF AMERICA, } ss.:
District of Colorado, }

I, Francis W. Tupper, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and

foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein The United States of America was plaintiff and William H. Cochran and Robert H. Sayre were defendants, as fully and completely as the same still remain on file or of record in my office, at Denver.

In testimony to the above I do hereunto sign my name and affix the seal of the said court, at Denver, in said district, this 27th day of September, A. D. 1894.

Seal United States District Court, District of Colorado.

FRANCIS W. TUPPER, *Clerk.*

239 *Citation, U. S. — Court.*

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to The United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the eighth day of October next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Colorado, wherein William H. Cochran and Robert H. Sayre are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-four.

MOSES HALLETT, *Judge.*

240 [Endorsed:] Gen. No. 959. District court of the United States, district of Colorado. William H. Cochran and Robert H. Sayre, plaintiffs in error, *vs.* The United States of America, defendant in error. Citation. Filed in district court of the U. S. this 27th day of Sept., A. D. 1894. F. W. Tupper, clerk, by —— ——, deputy clerk. Thomas, Hartzell, Bryant & Lee, attorney for plaintiff in error.

Proof of Service.

THE UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

I accept service of this writ on this 27th day of September, A. D. 1894.

HENRY V. JOHNSON,
U. S. Att'y for Colorado,
By HENRY R. RHODES,
Ass't U. S. Att'y for Colorado.

241 *Writ of Error to District Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States to the judge of the district court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, between The United States of America and William H. Cochran and Robert H. Sayre, a manifest error hath happened, to the great damage of the said William H. Cochran and Robert H. Sayre, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 8th day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal United States District Court, District of Colorado.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the 119th year.

FRANCIS W. TUPPER, *Clerk.*

Allowed by—
MOSES HALLETT, *Judge.*

242 [Endorsed:] Gen. No. 959. District court of the United States. William H. Cochran and Robert H. Sayre, plaintiffs in error, *vs.* The United States of America. Writ of error to district court U. S., district of Colorado. Filed in Supreme Court of the U. S. this — day of ——, A. D. 18—. —— ——, clerk, by —— ——, deputy clerk. C. S. Thomas, E. F. Richardson, attorney- for plaintiff- in error.

Return.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a

duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said district court, at Denver, in said district, this 27th day of September, 1894.

[Seal United States District Court, District of Colorado.]

FRANCIS W. TUPPER, *Clerk.*

Endorsed on cover: Case No. 15,699. Colorado D. C. U. S. Term No., 815. William H. Cochran and Robert H. Sayre, plaintiffs in error, *vs.* The United States. Filed October 8th, 1894.

Office Supreme Court, U. S.
FILED.
FEB 21 1895
JAMES H. McKENNEY,
CLERK.

No. 15,699.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 815.

OCTOBER TERM. 1894.

WILLIAM H. COCHRAN,
ROBERT H. SAYRE,
Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA,
Defendant in Error.

Error to the District Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

CHARLES S. THOMAS,
E. F. RICHARDSON,
Attorneys for Plaintiffs in Error.

GAY ENGRAVER PRINT, DEL NORTE

No. 15,699.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 815.

OCTOBER TERM. 1894.

WILLIAM H. COCHRAN,
AND
ROBERT H. SAYRE,
Plaintiffs in Error,
versus
THE UNITED STATES OF AMERICA,
Defendant in Error.

Error to the District Court of the United States for the District of Colorado.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

STATEMENT.

On the 22d day of November, 1893, the federal grand jury presented three several indictments against the plaintiffs in error, which were numbered 959-960, and 992 respectively. These indictments were identical in language except in so far as it was necessary to change them, so

that both of the plaintiffs in error could be charged as principals, as was done in No. 959, so that Sayre could be charged as principal and Cochran as accessory, as was done in No. 960, and so that Cochran could be charged as principal and Sayre as accessory, as was done in No. 992.

There were originally twelve counts in each of these indictments, which may be divided into three groups based upon five reports made to the Comptroller of the Currency, under section 5,211 of the Revised Statutes, during the year 1892.

The first five counts of each indictment complain of reports made to the Comptroller on the respective dates of September 30, 1892; May 17, 1892; July 12, 1892; December 9, 1892, and March 1, 1892, wherein it is alleged that such reports were false under said section in that "said association was then and there indebted and liable to the Hanover National Bank of New York City to the sum of $5,000, evidenced by a certain promisory note executed by the said Robert H. Sayre and one A. H. Clark, and payment thereof *guaranteed* by said association" and that said indebtedness was wholly and entirely omitted from said reports so that the entry of the word "*none*" on the reports, under the head of "liabilities" No. "19" was for the purpose of deceiving and defrauding as in the statute contemplated.

The next four counts of each indictment complain of reports made on the respective dates of September 30, 1892; May 17, 1892; July 12, 1892, and March 1, 1892, wherein it is alleged that such reports were false under said section in that "said association had then and there and theretofore made *loans* exceeding the limits prescribed by section 5,200 of the Revised Statutes" and that one of

such loans, viz: the sum of $25,000 due from a "banking institution known as the Miners' and Merchants' Exchange Bank," was wholly omitted from that portion of such reports prepared for the entry of "loans exceeding the limit prescribed by section 5,200 of the Revised Statutes, including amounts which exceed this limit due from state and private bankers" which omission was for the purpose of deceiving and defrauding as in the statute contemplated.

The last three counts of each indictment complain of reports made on the respective dates of September 30, 1892, May 17, 1892, and July 12, 1892, wherein it is alleged that such reports were false under said section in that "said association did then and there pay to sundry persons to the grand jurors unknown a greater rate of interest than 8 per cent," although in a certain entry on said reports it appeared that "the highest rate of interest paid by the bank on deposits is 8 per cent" which said entry was made for the purpose of deceiving and defrauding as by said statute contemplated.

That on the 10th day of January, 1894, the plaintiffs in error were heard on a motion to quash all of the counts contained in the first and third groups as hereinbefore set forth, to-wit: as to counts numbe ed 1, 2, 3, 4, 5, 10, 11, and 12, and on the same day an order was entered sustaining said motion as to the last group, viz: counts 10, 11, and 12, and overuling the same as to the first group, viz: 1, 2, 3, 4, and 5.

On May 11, 1894, all three causes were consolidated under No. 959, and Tuesday, June 5, 1894, the trial commenced on the first nine counts in each indictment.

During the course of the trial the five several reports

which were made to the Comptroller of the Currency (see folio 136), were sought to be introduced to sustain the allegations of the first and second group of counts. This offer was objected to and thereupon all of said reports were rejected with the exception of the one of September 30, 1892, which was allowed in evidence and furnished the foundation for the allegations contained in the first and sixth of the counts remaining in each indictment.

By the charge to the jury (see folio 191) the admission of the report, marked Exhibit "A," was limited to the first and sixth counts of the indictment originally numbered 960, wherein Sayre is charged as principal and Cochran as accessory, and in the further consideration of said charge (see folio 200) the sixth count was practically eliminated from the case, leaving the jury to pass upon the guilt or innocence of the plaintiffs in error, upon the report of September 30, 1892, under the allegations of the first count of indictment No. 960.

June 6, 1894, the jury returned a verdict of guilty under said count.

On the 9th day of June, 1894, the plaintiffs in error interposed their motion for a new trial which was denied on July 24, 1894, and, thereupon the plaintiffs in error filed their motion in arrest of judgment, which was upon the same day overruled and sentence passed upon plaintiffs in error condemning them to the Joliet penitentiary for five years and the payment of one-half of the costs. Thirty days were given in which to file a bill of exceptions, which was done on August 22, 1894, and pursuant to stipulation (see folio 213) a supplemental bill of exceptions was filed after being allowed on September 10, 1894, as of July 24, 1894. (See folio 218.)

On September 21, 1894, an assignment of errors was filed by plaintiffs in error, and a writ of error sued out which said writ was allowed to issue by the trial judge, whereupon bonds were furnished by plaintiffs in error, in accordance with the order made in that behalf (see folio 233), and said writ of error was to operate as a supersedeas.

Citation issued September 21, 1894, and service admitted September 27, 1894, (folios 239-240) by attorney for the government.

Writ of error issued and return made thereto by the clerk of the District Court, bearing date September 27, 1894.

SPECIFICATION OF ERRORS.

First—The Court erred in overruling the motion to quash their indictments filed against them, and especially in overruling said motion as to the first count in the indictment in the case numbered originally 960.

Second—The Court erred in permitting the attorney for the United States to ask the witness Chas. W. Thomas the following question:

"Had you ever had any experience in a bank, or the business of a bank, before you came to Colorado?" and in permitting the said defendant Thomas to answer the same as follows: 'I was never in a bank. After I returned from Colorado I went in a bank about the first of January, 1890, in Portsmouth.'"

Third—The Court erred in permitting the government of the United States to ask the witness Thomas the following question: "When the Comptroller would call on the bank for statements, what was your habit as to taking

any part in the getting up of those statements?" and in permitting the following answer to be given in evidence: "Well, I never made any statements."

Fourth—The Court erred in permitting the attorney for the United States to ask the witness Thomas the following question: "Now, Mr. Thomas, was that note what you call in its present condition a re-discounted note?" and in permitting the defendant Thomas to give the following answer and the same to go in evidence: "Yes, sir; I say it is payable to the First National Bank of Del Norte, and it is re-discounted, too. I don't say what bank it is re-discounted to; it says for value received, hereby guaranteeing the within note at maturity, etc."

Fifth—The Court erred in permitting the attorney for the United States to introduce in evidence the report of the First National Bank of Del Norte to the Comptroller of the Currency, dated September 30, 1892, the same being referred to and marked in the bill of exceptions as "Exhibit A."

Sixth—The Court erred in refusing to permit counsel for the defendants to ask the witness Thomas the following question: "Didn't you borrow $5,000 and give your note?" and in refusing to permit the defendants to show that the witness had borrowed $5,000 on his own account in the bank, and that his wife had borrowed the same amount, and that the witness was familiar with the condition of the bank.

Seventh—The Court erred in refusing to permit the counsel for the defendant, to ask the witness Thomas on cross-examination the following question: "Should the same item appear more than once in that statement, what would be the result?"

Eighth—The Court erred in permitting the counsel for the government to ask the witness Logan the following question: "Is that note the renewal of other notes or not?" and in permitting the witness to answer the same as follows: "This note is a renewal of a note that matured on August 21, 1892, made by the same parties, and guaranteed and endorsed by the same bank and for the same amount."

Ninth—The Court erred in permitting the witness Logan to testify as follows: "That he did not have the other notes which had been sent to the First National Bank of Del Norte for collection were charged to their account when they became due, and the proceeds of that note and the proceeds of another renewal credited to the account of the First National Bank of Del Norte. By proceeds is meant the amount of the note less the interest for the time it had to run at the rate of 6 per cent per annum. The note of which this is a renewal was itself a renewal of another note."

Tenth—The Court erred in permitting the attorney for the government to ask the witness Logan the following question: "So that upon this note, the two original notes of which you have spoken, the First National Bank was indebted to your bank from December 18, 1891, up to the present time?" and in permitting the witness Logan to answer the same as follows: "Yes, sir."

Eleventh—The Court erred in permitting the witness J. B. Lazear to testify, that when the circular sent to the Hanover National Bank of New York was by a bank examiner returned it disclosed that the Hanover bank held a discount of $5,000 for the First National Bank of Del Norte.

Twelfth—The Court erred in permitting the counsel for the government to ask the witness Lazear the following question: "What was the amount due as an overdraft from the Creede bank to the First National Bank of Del Norte when you took possession of it as examiner?" and in permitting the witness Lazear to answer the same as follows: "It was about $22,500 on overdraft, $5,000 additional on note, making about $28,000."

Thirteenth—The Court erred in refusing to permit counsel for the defendants to ask the witness Lazear on cross-examination the following question: "Whether it is a liability or not, would you call it a liability until I had failed to meet the obligation?"

Fourteenth—The Court erred in refusing to instruct the jury to bring in a verdict for the defendants at the close of the case made by the government.

Fifteenth—The Court erred in permitting the counsel for the government to ask the witness Sayre the following question: "Now, will you turn to your individual ledger and show me of what that overdraft consisted?" and in permitting the witness Sayre, in answer to that question, to give in evidence the various items found in his testimony.

Sixteenth—The Court erred in permitting the government to ask the witness Sayre, upon cross-examination, the following question: "Now, why did you write the word 'None' in there, Mr. Sayre?" and in compelling the witness Sayre to answer said question, his answer being as follows: "I wrote the word 'None' in there for the reason that I had not them secured, I suppose; none secured; none secured or unsecured. The drafts were all secured in a sense. Certainly they were all expected to be paid.

That is what that means. They are only temporary; they might be blotted out the next day, as the book shows."

Seventeenth—The Court erred in permitting the government, upon cross-examination, to ask the witness Sayre the following question: "Under the head of 'secured' and 'unsecured,' Mr. Sayre, are not there lines here 'standing twelve months or over;' 'standing three months or over;' 'standing one month or over,' and then 'temporary'? and in compelling the witness Sayre to answer said question, his answer being as follows:

"Yes, sir; and I have written the whole of that $3,745.12 on the line 'temporary,' meaning that the overdrafts were only temporary and that they might be liquidated at any time by deposits. I understand this statement to say that if any of these overdrafts had been standing three, six, or twelve months I should put them on the line corresponding to those months. Some of these overdrafts may have been standing one or three months. On close examination I should have put them there. If any one account should have been continued just the same for a month it would, probably, be gone above there, but I do not know that is the case. It would not be the same overdraft if it varied five cents."

Eighteenth—The Court erred in permitting the government, in its cross-examination of the witness Sayre concerning the overdraft of the San Luis Valley Company, to ask him the following question: "See if it continued as an overdraft for a month back?" and in permitting the witness to answer that "the account was alike for two days at a time, and on September 19 they got a deposit of $92.04."

Nineteenth—The Court erred in permitting the same question in regard to the account of the Rio Grande Meat Company and E. F. Richardson.

Twentieth—The Court erred in permitting the government, by its counsel, to ask the witness Sayre, upon cross-examination, the following question: "Under the heads of loans and discounts under the schedule you have written the word 'none' opposite 'liabilities of directors, individual and firm,' 'as payers, none,' why did you write the word 'none' there?" and in permitting the witness Sayre to give in evidence his explanation and stating as the reason why that he supposed these amounts had been included in the title of bills payable and other items of the schedule, and that he supposed there were no liabilities to the bank on the 30th of September, 1892.

Twenty-first—The Court erred in permitting the counsel for the government to ask the witness Sayre, on cross-examination, the following question: "Did you have any bad debts as of September 30?" and in permitting the witness Sayre to answer that he thought at that time they had none, although subsequent events had demonstrated that there probably were some.

Twenty-second—The Court erred in refusing to permit the defendants to ask the witness Sayre the following question: "How did that report come to be made?" the same referring to the report made in December, 1892, and the Court erred in refusing to permit the defendants to prove by the witness Sayre, in answer to that question, that at the time of making the report, which was made after the bank had closed, that it was made under the counsel and direction of James B. Lazear, national bank examiner, and when it had been made it was turned over

to him and was last seen by the officers of the bank in his possession, and that the report was identical in form and substance with that of September 30, 1892.

Twenty-third—The Court erred in permitting counsel for the government, upon cross examination, to ask the witness Cochran the following question: "Now, can you explain why he wrote 'none' in there opposite 'liabilities of the directors of the bank'?" and permitting to go in evidence the answers of the witness Cochran to that question, his answers being in substance that he did not write it and he presumed that Mr. Sayre had supposed there were no such liabilities.

Twenty-fourth—The Court erred in giving to the jury the following instruction: "If, as I understand Mr. Cochran to say, that note at the time it was given by Sayre and Clark was immediately discounted by the First National Bank and the amount paid to Sayre by giving him credit on the books of the bank for that amount, it was undoubtedly a loan to Sayre, with a note taken in security for that loan, and the subsequent transaction with the Hanover National Bank by which this note was transferred to that bank upon the guaranty of the First National Bank of Del Norte was a re-discount of that note to that bank, and if the facts are as thus stated the note should have appeared upon this statement among notes and bills rediscounted."

Twenty-fifth—The Court erred in giving the jury the following instruction: "On the other hand, if the fact is not as supposed, that the amount was immediately credited to Sayre upon the execution of this note, and that nothing was got by him until it was transmitted to the Hanover National Bank, and then sold to that bank upon the credit

of Sayre and Clarke and the First National Bank of Del Norte, all parties were makers of the note; they were makers of the note notwithstanding the guarantee put on the back of the note, because it is a rule of law that if several persons execute a note at one and the same time, with a view to give those who appear to be makers of the note credit with the payee or the person to whom it is delivered, they shall all be regarded as makers, and this notwithstanding the fact that one or more of such persons —instead of the front or at the foot of the note."

Twenty-sixth—The Court erred in giving to the jury the following instruction: "In that view the bill or note would be one which would properly appear in this report under the head of 'bills payable,' so that we may say that in either case, whether the note was discounted by the bank of Del Norte by paying to Sayre the amount for which it was given at the time it was executed and afterwards sold by that bank to the Hanover bank, or whether the transaction was first a sale to the Hanover National Bank, with all the signatures upon it, that it should have appeared in one or the other of these places, in 17 or 18—that is, No. 17 or 18 of the items making up the liabilities of the bank as stated in this report. The pleader in setting it forth seems to have been in doubt as to whether it should be called one thing or another, and so he assumed that it was one which should have been mentioned under the head of 'liabilities' other than those above stated; and I think he could reasonably do so, and that he may charge that the entry was not true, as he has done."

Twenty-seventh—The Court erred in giving to the jury the following instruction: "It seemed to be assumed by counsel and by the witnesses on the stand that because

it was paper which was not due that it would not have the character of a liability of the bank, and that because the bank appeared upon the paper as a guarantor that therefore it was one which was unnecessary to mention in the report; but I do not think that can be a correct assumption."

Twenty-eighth—The Court erred in giving to the jury the following instruction: "This note was omitted from the books of the bank also; the omission must have been in order that the fact of the existence of this liability on the part of the bank should not come to the knowledge or notice of the agents appointed by the Comptroller to examine the bank, or of some person connected with the government, or of some person interested in the bank. There must have been the element of concealment in it, So that you must find not only the fact that there was an omission to make the proper entry, but that it was with an intent to conceal the fact from somebody who was concerned in the bank or concerned in overseeing it."

Twenty-ninth—The Court erred in giving to the jury the following instruction: "It seems there was no entry in the books of this note; the note and everything connected with it was entirely omitted from the records of the bank from beginning to end; so that it would seem that the omission, prevailing at all times, must have been with the knowledge of all officers of the bank, or at least that would be a just inference."

Thirtieth—The Court erred in refusing to instruct the jury, as requested by the defendants, as follows: "You are instructed that a false entry in a report of a national bank officer or director to the Comptroller of the Currency, within the meaning of the Revised Statute, section

5,209, is not merely an incorrect entry made through inadvertence, negligence, or mistake, but is an entry known to the maker to be untrue and incorrect, and intentionally entered while so knowing its false and untrue character. The intention to deceive is essential to constitute a violation of the statute, and you must be satisfied beyond a reasonable doubt from the evidence—*first*, that the defendants, or one of them, made false entry in said report; and, *second*, that it was made with the intention of misleading or deceiving the Comptroller of the Currency, or some other person or persons alleged in the said indictment."

Thirty-first—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed that a national bank is not required to conform to the headings of the various accounts on its books to any prescribed names, nor to the names stated in the form of report prescribed by the Comptroller, and, therefore, when a report is called for, if the person making it enters under the headings in the prescribed form a statement of the bank's condition which is true in respect to the headings in said form, he has fulfilled the demands of the law."

Thirty-second—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed, as a matter of law, that an overdraft is not a loan or discount, although it is an item of indebtedness due to the bank. Loans and discounts refer to credits due to the bank under obligations running for a definite time and amount, while overdrafts are amounts due from depositors to the bank, immediately payable and subject to variation from day to

day. Hence you are instructed that the account due from the Miners' and Merchants' Exchange Bank of Creede to the First National Bank of Del Norte was not such a loan or discount as required the same to be stated in said report under the head of loans and discounts in excess of the limit fixed by law."

Thirty-third—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed that if you believe from the evidence that on the 30th day of September, 1892, a certain note executed by the defendant Sayre and A. H. Clark to the First National Bank, and by the First National Bank guaranteed to the Hanover National Bank of New York for the benefit of said Sayre, but which at the time when said report was made was not due, and that because the same was a guarantee of the said First National Bank of Del Norte to the said Hanover National Bank it was not placed upon the books of the Del Norte Bank, then you are instructed that the said item had no place in the report of the said First National Bank of Del Norte"

Thirty-fourth—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed that this indictment is for the making of false entries in a report to the Comptroller and not for false entries in the books of said bank, and if you believe from the evidence that the said item of $5,000 did not appear upon the books of said bank, then you are instructed that its entry upon the report, for the falsity of which the defendants are indicted, would have been a false representation of the condition of said bank, and that the said defendants had no right or author-

ity to place the same thereon. If you believe from the evidence that the said defendants honestly believed the said $5,000 note to have no proper part or place among the business transaction of said bank because the same consisted simply of a guarantee of the said bank and was not a re-discount of its paper, and that the proceeds of the said note so guaranteed went to the said Sayre and not to the said bank, and so honestly believing did not regard the same as an item properly appearing upon the books, of said bank and left the same off of said books, then you are instructed that there was no intention to deceive or mislead any officer or other person, and you should render a verdict of not guilty."

Thirty-fifth—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "If you believe from the evidence that the the defendant Sayre, in making said report, placed the amount due as an overdraft from the Creede Bank to the First National Bank under the heading of amounts due from State and private banks and bankers instead of among the overdrafts of individuals, he believing the same properly to belong to said heading, then you are instructed that the defendants should be acquitted."

Thirty-sixth—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed that the defendants are presumed to be innocent until the contrary appears beyond a reasonable doubt, and that every reasonable doubt or presumption arising from the evidence must be construed in their favor."

Thirty-seventh—The Court erred in refusing to give to the jury, at the request of the defendants, the following

instruction: "You are further instructed that unless you believe, beyond a reasonable doubt, from the evidence that the defendant Sayre knowingly and wilfully falsified the report of September 30, 1892, as charged in the indictment, you must acquit both defendants, and although you should believe that the defendant Sayre did so falsify said report, yet if you should fail to fully believe, beyond a reasonable doubt, from the evidence that the said Cochran aided and abetted the said Sayre in so falsely making said entries with intention of deceiving and misleading, as charged in the indictment, you can not as to said Cochran render a verdict of guilty."

Thirty-eighth—The Court erred in refusing to give to the jury, at the request of the defendants, the following instruction: "You are further instructed that inasmuch as the said report is not verified by either of the defendants, only one of whom has attested the same as correct, and inasmuch as it appears from the said report that the same was verified by Charles W. Thomas, cashier, and the said Charles W. Thomas not having been indicted for making said false entries, neither of these defendants can be convicted."

Thirty-ninth—The Court erred in overruling the defendants' motion for a new trial.

Fortieth—The Court erred in overruling the defendants' motion in arrest of judgment.

Forty-first—The Court erred in sentencing the defendants and entering judgment against them of imprisonment or any other judgment.

Forty-second—The Court erred in failing to discharge the prisoners and releasing them upon the whole record and evidence in said cause.

BRIEF AND ARGUMENT.

First—We believe that the Court below should have sustained the motion to quash the first group of counts in the several indictments including, as it did, the first count in the indictment originally numbered 960, for the following reasons:

1. There is nowhere any averment in those counts or any of them that the report was one made by the *association.* The averment is (discussing first count of No. 960—see folio 38), that Sayre "did make, in a certain report of the condition of the First National Bank * * * at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency, *in accordance with the provisions of section 5211 of the Revised Statutes,* * * * a certain entry," etc. Section 5211 therein referred to uses the following language: "*Every association* shall make to the Comptroller * * * not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signatures of at least three of the directors," etc. Our contention is, that the failure to aver that this report was one made by the association is fatal. The allegation that it is made in accordance with a statute without using the language of the statute is certainly insufficient in a criminal pleading, as there are no common law offenses against federal authority.

United States vs. *Potter et al*, 56 Federal. 88.
United States vs. *Cooke*, 17 Wall. 174.
United States vs. *Cruikshank*, 92 U. S. 542-557.
United States vs. *Britton*, 108 U. S. 192.
United States vs. *Potter*, 56 Federal. 97.
United States vs. *Mann*, 95 U. S. 580.
United States vs. *Hess*, 124 U. S. 483.

2. By the statute, no one had any authority to make this report but the president or cashier, within the meaning and intent of the section. It is alleged that Cochran is the president and Sayre assistant cashier. Clearly Sayre could not make the report, nor any entry therein, under the statute. Cochran *might* have done so, but as he is accessory here, his principal must be lawfully convicted first. The statute was never enacted to punish any one as *principal* save the officer verifying the report. These officers are two, and only two, viz: the president and cashier.

United States vs. *Potter*, 56 Federal Reporter, p. 83.

In discussing that case Circuit Judge Putnam says: "They are not based on the last clause of section 5,209 of the Revised Statutes punishing aiding and abetting, but the accused are directly charged in their official character as directors, with *making false entries in reports* to the Comptroller. Their specific duties as to such reports are covered by the words "*and attested by the signatures of at least three of the directors.*" By the statute these reports are required to be made "*by the association*" and to be verified by the oath of the "*president or cashier.*" The provision for attestation by the directors was not in the banking act of 1864, but came in by the additional or amendatory act of March 3, 1869. No case has been cited, nor have I found one, where an indictment of this character has been sustained, unless it be *United States* vs. *Means*, 42 Fed. Rep. 599. The report of this case covers only a charge to a jury which, of course, never carries much weight as an authority. Moreover, the question involved here does not seem to have been discussed or specially considered. *All the other cases have been against the president or cashier who*

verified the report. *United States* vs. *Britton*, 107 U. S. 655, was a case of false entry in books by the president, an executive officer, and is not in any way analogus. (Quaere: Is it not because that indictment had nothing to do with *a report under section 5,211?*) The indictments allege in conformity with the statute that the reports were *made by the association.* They do not charge that French or Dana made the reports or had any authority to make them (we are not charged here with making the reports, in fact the indictment is silent as to who made them). The reports are set out in the indictments by their tenor. Those which the Court have examined appear in the usual form, signed by the cashier and verified by his oath, and attested as required by statute, by three directors including in some cases French and in others Dana.

It would be an unnatural and strained construction of the statute to hold that the words "false entry" mean "forged" entry—"fictitious" entry—or any other entry made by person not authorized to make the report, or at least who did not make it. The context of the statute shows that the word "false" is used in contradistinction to the word "correct" and that the statute in this particular relates only to those who have the right or authority to make correct and true entries or reports, or who assume such authority and to none others. Presumably these reports are made by the cashier or president, (here they must have been so made because the allegation is that they are made "in accordance with the provisions of section 5,211"), who as the executive officers, are authorized to verify them; *and presumably any entry made in them by any other person would not be a false one within the meaning of the statute, but fictitious, forged or otherwise unauthorized.*"

3. For the purpose of this argument, we may concede that Sayre might be held as principal and Cochran as accessory under section 5,209 for a false entry in a report to the Comptroller, or in any other report under that section, but when the language of the indictment limits the character of the report to one made under section 5,211 of the Revised Statutes, it is at once clear that Sayre, being assistant cashier as it is alleged, could himself only be convicted under the aid and abet clause of section 5,209. Judge Putnam says in the case quoted *supra*: "The existence of that appropriate provision warns the Court that it ought not to strain other portions of the statute to meet what this is intended to plainly and aptly cover."

4. The failure to allege that these reports were verified or attested, as required by section 5,211, and the further failure to show that they conformed to the law in every respect except as to the matter of the false entry, is fatal to every count in said group in each and every of said indictments. It is not enough to say, as we have heretofore shown, that the law has been complied with. This particular statute was under consideration in the Potter case, and on page 102 of 56th Federal Reporter it is said "with an ordinary declaration on a contract it would be at once admitted that it is not sufficient to merely set out the tenor of the contract, and that there must be a specific allegation of the details of its execution and, of course, in indictments this rule would be held more strictly than in pleadings in civil proceedings."

It will not do to say that there is any distiction between that case and the one at bar, because in the Potter case the indictment was for making false entries in reports

to the Comptroller, and that is true here. There the counts were held invalid by the trial court, here they were sustained.

United States vs. *Mann*, 95 U. S. 580.
United States vs. *Hess*, 124 U. S. 483.

Second—We complain of the action of the Court below in allowing the witness Thomas (folio 128) to testify as to his experience in the banking business. That question and answer must have tended to produce upon the minds of the jury that Mr. Thomas was the innocent and unsuspecting tool of the crafty and designing plaintiffs in error, when no question of that kind was presented anywhere in any of said indictments. Such testimony could scarcely have failed to have been prejudicial to plaintiffs in error.

Third—We think the Court below committed reversible error in permitting the witness Thomas to testify as to his habit in getting up statements generally (folio 130). We were called upon to answer to specific statements, all of which were sworn to by Thomas himself, and, so far as we can determine, we may well believe that the question and answer caused the jury to decide that we were wholly responsible for the specific reports complained of in the indictments.

Fourth—Why should Mr. Thomas be permitted, after showing his entire lack of qualification, to pass upon the delicate question (folio 135) of whether the note (marked Exhibit "C," folio 162) was a re-discount or not? As the main question upon which the jury were to find related exclusively to that note such testimony must have had a great and prejudicial effect against plaintiffs in error.

Fifth—The Court erred in permitting the introduction of Exhibit "A" in evidence over our objection (folio 136) for the following reasons:

1. Every count in the indictments charge the defendants in their capacity respectively as president and assistant cashier with making false entries in reports; and in the first count of indictment No. 960, upon which we were convicted, Sayre is charged as principal and Cochran as accessory. Now, Exhibit "A" shows that it was verified by Thomas who, as we have already seen, is the only person subject to indictment as principal upon that report. If we were charged as accessories to Mr. Thomas the case would stand upon a different footing. Our contention is that the mere clerical work of filling in the report, is not a making thereof within the contemplation of the statute. This filling in was undoubtedly done by Sayre who might be subject to conviction as accessory before the fact to Thomas, but never as principal. The discussion *supra* on the motion to quash is still more applicable here. While it is true that this indictment is *found* under section 5,209, it is equally true that it is *founded* on section 5,211. Now, there can be no doubt but what the pleader has copied the form of the indictment as nearly as possible set out *in extenso* by Justice Woods in the Britton case, 107 U. S. 655, and by this Court duly approved in the opinion following but the very clear distinction which the pleader seems to have lost sight of is, that the indictment in that case has nothing whatever to do with section 5,211, but relates exclusively to false entries in books under section 5,209. There is, therefore, a clear variance between the proof and the allegations of the indictment for assuming that an assistant cashier can verify such a report (a position negatived by the statute as well as the words appearing on Exhibit "A," under caption NOTE) or that he can *make* such report (see Rev. Stat. 5,211), is it not at once

apparent that he did not make the report as contemplated by that section?

2. As Sayre could have no connection with Exhibit "A," as principal, let us see how Cochran stands. If he is convicted at all, he must be convicted as *director*. Now, he is charged as *president*. Could the fact, *aliunde*, that he was president support the allegation of the indictment by an exhibit which he signed as *director?* His connection with any report made under section 5,211 could be by reason of either his presidency or his directorship. The allegation is by virtue of his presidency. The proof by Exhibit "A" either convicts him as a director or not at all. Again, by the language of the statute his single and only duty as such director is that of attestation. Attestation of what? Of the signature of the verifying officers, or that it is a report under the section, or that it is a correct and truthful report? The statute does not inform us, and the word in and of itself may (as defined by an authority which this Court has repeatedly sanctioned) mean any or all of these things. At any rate, the most that can be said is, that such signature is a lending of aid to that which has been done by some one else, and that "some one else" must be some one who is *authorized* within the meaning and intent of the section.

United States vs. *Potter*, 56 Federal. Read from page 93.

Sixth—If it was permissible for the witness Thomas, on direct examination, to show that he knew nothing about what was going on in the bank (folio 198), it was certainly permissible for us, under our sixth specification, to go into detail to prove that he knew all about its affairs, and that he and his wife were among the largest

borrowers of the bank; that, in fact, each of them were creditors to the full limit permitted by the banking laws. Why Mr. Thomas should be shielded from such investigation under his direct testimony must have been a matter in the view of the jury, authorizing them to indulge in the wildest speculation against us.

Seventh—After having told us that he knew nothing practically about running a bank, and then having delivered himself of expert testimony as to what constituted liabilities of the bank, we think, we certainly had a right to have an answer from the witness Thomas as to the effect of entering an item twice upon a statement purporting to show assets and liabilities. (Folio 143.)

Eighth—How could it be material under this specification to ascertain whether the note marked Exhibit "C" (folio 162), was a renewal of another note or notes (folio 145)? At this point we were proceeding under the report of September 30th and under count one of indictment No. 960, wherein we were charged with liability by reason of a *guaranty* on a note of Sayre and Clarke to the Hanover National Bank. Can we be convicted on some other note? If not, why is the prosecution permitted to range at large through the manifold transactions of a national bank for months and years where by innuendo events well nigh, if not entirely, forgotten may seem to cast some smirch upon the garments of those under accusation? How could we be prepared to defend under this indictment evidence of such character? It is needless to say that an examination of the record in connection with this question will convince any one that it was upon this branch of the case that the jury must have rested their verdict of conviction. A citation of authorities to show that the

evidence must be confined to the allegations is unnecessary (Folio 145.)

Ninth—We have discussed this specification under specification 8. (Folio 145.)

Tenth—This specification is also discussed under specification 8 in part (folio 146), and the question in addition clearly calls for a legal opinion from Mr. Logan to the effect that the papers he was talking about, actually, in law constituted an indebtedness, a proposition which will hereafter be discussed and denied.

Eleventh—We certainly had a right under this specification to see and know what this circular was (folio 156). How could any *discount* held by the Hanover Bank in July be material upon a charge of liability under a *guaranty*. We were called to defend a *guaranty* in existence on September 30. We are confronted with testimony of a discount in July. A discount establishes a primary liability, a guaranty, only a contingent liability.

See authorities hereinafter cited and discussed.

Twelfth—Under this specification, we were charged with an excess loan, and evidence was permitted of an overdraft (folio 157). While it is true that we were not convicted on that count of the indictment relative to the excess loan, the jury had a right to believe, and undoubtedly did believe, that such evidence was competent to convict us under an indictment for making a false entry. In any view it was immaterial and should have been excluded.

Thirteenth—The witness had clearly assumed in his direct examination to call the guaranty on the note marked Exhibit "C" a re-discount (folio 159), and had stated where such paper should have appeared in the re-

port. Was it not error to preclude us from ascertaining (folio 160) whether it was a liability at all or not?

Fourteenth—We think the Court upon the case made (folio 162) should have instructed the jury that no case had been made against either of the defendants. As the case then stood we were proceeding upon counts one and six of indictment No. 960. By count one we were charged with making a false entry in a report to the Comptroller in, that the bank was indebted to the Hanover National Bank of New York by reason of its guaranty of the note of Sayre and A. H. Clarke. The note was introduced in evidence and the endorsement thereof marked Exhibit "C" (folio 162), and it was upon this exhibit that they must sustain said count or fail to make a case. With reference to this note, we claim that whatever liability there was is determined by the written contract of endorsement (folio 162). Neither the oral opinion of the witness Thomas, the witness Abry, or the witness Lazear, can change it, nor can the assumption of the Hanover Bank by entering it in its book either as a discount or a re-discount. This written contract, if contract at all, is one of *guaranty*, the liability is one of *guaranty*, the *allegation* of the *indictment is one of guaranty*, and upon *guaranty* and *guaranty* alone can we be convicted lawfully, if convicted at all. Therefore, all evidence of endorsement, discount, or rediscount is clearly immaterial, and by the instrument must we determine its competency to convict us. Nor does the case of *People's Bank* vs. *National Bank*, 101 U. S. 181, help the government on this question, for that case was decided upon the proposition that the papers passed through the bank in the regular course of business. The bank received the benefit of the transaction, and the officer of the bank

was acting strictly within the scope of his authority as an officer of the bank, which, as we shall see hereafter, was not the case in this instance.

In the first place then, we assert that there is no liability in law on a guaranty until the default on the maker of the note.

Daniel on Negotiable Instruments, section 1,752.
Sturges vs. *Bank*, 11 Ohio St. 153.
Mathews vs. *Chrisman*, 12 S & M. 595.
Peck vs. *Fink*, 10 Iowa 193.

There could be no such default on this note until the 24th day of December, 1892, clearly none on the 30th day of September when this report was made. If then there was no liability at the time the report was made by reason of the *guaranty*, it is is immaterial whether there was any *other* liability or not. We could not be convicted on it under this count.

In the second place this endorsement is a palpable attempt on the part of some one to *loan* the bank's credit to Sayre and Clarke. As such, it was clearly void on its face as being *ultra vires*, and in any event the only way such a guaranty could be held to constitute a liability would be by action of the directory of the bank, or participation in the proceeds of the paper with full knowledge of the facts. The former was nowhere attempted, and it is perfectly clear, as was said by the learned trial judge, that there is a total silence both of the books of the bank and its officers as to the latter.

National Bank of Commerce vs. *First National Bank of Kansas City*, 55 Federal 465.
First National Bank vs. *Hoch*, 89 Penn. St. 324.
First National Bank vs. *Ocean Nat. Bank*, 60 N. Y. 278.
Western National Bank vs. *Armstrong*, 152 U. S. 346.

Under the doctrine laid down in the last case, we undertake to say that this note never did, never has, never will, and never can constitute any liability against the First National Bank whatever. While a bank may incur liabilities in the *regular* course of its business, yet *guaranty* has never been held to be in the regular course of business of a bank unless accompanied by other circumstances, nowhere apparent in this case. Had we been charged with being liable on a re-discount, and proof of a re-discount introduced by the books of the First National Bank, it is probable we would have come within the definition of the principle laid down by this Court in the case cited *supra*, but before a conviction can be maintained on the guaranty introduced there must be shown, on the part of the officer or agent acting for the bank, a special authority. Wherein does a loan of the bank's credit, or rather an attempt to loan its credit, as was the case here, strengthen the position of the prosecution. As was said in the Fidelity Bank case, "without pursuing this part of the subject further, we think it evident that Harper had no authority to borrow this money and that the bank cannot be held for his engagements.

Where in the national bank act is there any authority to guarantee the paper of others? Where is any authority shown in the evidence authorizing such guaranty? Where, any participation in the proceeds or any other ratification either expressed or implied? Clearly nowhere. Therefore, if this alleged *guaranty* which we were called upon to defend constituted no *liability* of the bank, it had no place in the report either under the head of 19 or elsewhere, and had we made such an entry *wilfully* of it then we could have been successfully prosecuted under the statute.

If, under the doctrine of the Fidelity case, it is attempted to so change the evidence as to convict us upon a discount or re-discount (the two terms seem to be used interchangeably in some of the cases), our answer is that we were not charged upon a discount or re-discount, and again the books of the First National Bank, according to Lazear and all the witnesses, are entirely silent upon that question whereas, if such paper was a re-discount, it must have appeared on the re-discount ledger in order to bind the bank, or the Hanover Bank must have taken it without notice—a fact which cannot be claimed as the indorsement itself puts them on notice that it is a guaranty.

Norton vs. *Derby National Bank*, 61 N. H. 589.
Salem Bank vs. *Gloucester Bank*, 17 Mass. 1.
Foster vs. *Essex Bank*, 17 Mass. 479.
Mechanics' Bank vs. *Bank of Columbia*, 5 Wheat. 326.
Bank vs. *Dunn*, 6 Pet. 51.
Bank vs. *Jones*, 8 Pet. 16.
United States vs. *City Bank of Columbus*, 21 How. 356.

There is another principle which ought to prevail in this connection. Sayre was on the face of this note. He was, as it is alleged, assistant cashier of the bank. The Hanover transaction was for his benefit, and it is well settled by the authorities that where the officer of the bank is a party to a transaction which is for his own benefit he cannot bind the bank. This in and of itself should have put the Hanover people upon notice.

Rhodes vs. *Webb*, 24 Minn. 292.

Fifteenth—(Folios 169–170.) By this question and answer we were called upon to defend something nowhere in the charge. It is wholly immaterial what overdrafts there were or whose they were.

Sixteenth—(Folio 171.) Same reasoning as in the fifteenth.

Seventeenth—(Folio 172.) Same reasoning as in the fifteenth.

Eighteenth—(Folio 172.) Same.

Nineteenth—(Folio 173.) Clearly the whole of these matters were immaterial. They were not introduced for the purpose of sustaining the indictment, they were not charged therein. Palpably, the only object of government counsel was to embarrass one of the counsel for the defense by showing that he had an overdraft at one time, for the whole matter was quickly dropped just so soon as that important *coup d'etat* was accomplished.

Twentieth—We were nowhere charged with any offense under this head (folio 173), and the evidence was clearly incompetent.

Twenty-first—(Folio 174.) Same reasoning as the twentieth.

Twenty-second—(Folio 176.) For the purpose of showing intent if nothing more, especially in view of the wide latitude given counsel for the government, we ought to have had the right to ascertain whether the government officer himself had not authorized a similar report, he having a full knowledge of the Hanover transaction not only from Mr. Sayre (folio 158), but from the Hanover Bank as well (folio 155) by reason of Department circulars.

Twenty-third—(Folio 182.) This testimony was clearly incompetent, immaterial and irrelevant under the issues, and we are entitled to believe and do believe that it must have had weight with the jury.

Twenty-fourth—(Folio 201.) This instruction was erroneous for the following reasons among others:

1. Cochran did *not say* what the Court understood him to say, on the contrary, he said exactly the opposite (folios 183-4).

2. We were not charged with a false report, except under the head No. 19, nor were we charged or called upon to defend a *re-discount* but a *guaranty*.

See authorities *supra*.

Twenty-fifth—This instruction was erroneous because under the Fidelity case such paper would constitute no liability at all in any event against the bank (folio 201). *Something* besides the signature of the bank president was necessary to constitute that note a liability against the bank, and *nothing* was or could be shown.

Twenty-sixth—(Folio 202.) Already discussed in twenty-five.

Twenty-seventh—We think this instruction erroneous for the reasons given and authorities cited under specification No. 14 (folio 202).

Twenty-eighth—This was, to say the least, practically compelling the jury to find the defendants guilty. The language used is that they *must* find not only that the omission existed but the *intent* also. If this be correct law, then the jury was an entirely useless appendage; again, what have any of these indictments to do with omissions from the bank books? We go to defend against a false entry in a report and lo! we are confronted with fraudulent omissions from books (folio 202).

Twenty-ninth—How does it follow that because the books of the bank were silent about this note, that all the officers thereof had knowledge with regard to it? The

very fact that the books were silent would indicate that the directory of the bank knew nothing of the existence of the note (folio 203).

Thirtieth—(Folio 203.) We were entitled to have this instruction given. It correctly stated the law, and it was not covered by the instructions of the Court.

Thirty-first—(Folio 203.) This instruction was drawn under the Graves case.

United States vs. *Graves*, 53 Fed. 634,

and was particularly applicable in a case of dispute as to where certain items should be found on the report.

Thirty-second—(Folio 204.) As the Court practically eliminated count six by its instructions, it is not necessary to discuss this specification.

Thirty-third—(Folio 204.) We think we should have had this instruction under the authorities cited on guaranty, under specification fourteen hereof.

Thirty-fourth—(Folio 205.) This very clearly states the law and was not covered by the instructions of the Court.

Thirty-fifth—(Folio 205.) Same reasoning as thirty-fourth.

Thirty sixth—(Folio 206.) The Court should have allowed us this instruction as a general proposition in any criminal case.

Thirty-seventh—(Folio 206.) By the terms of the indictment (see folio 39), Cochran was charged as an accessory "*before* the said offense, as hereinbefore set forth, was committed." Not one scintilla of evidence connected him with knowing anything whatever of the report until after Sayre was entirely through with it (see folios 177 and

165). The Court instructed (folio 196) only as to the fact, that he "aided and abetted in it." If he can only be convicted under the indictment, then he must be convicted as an accessory *before* the fact or not at all, and, hence, we should clearly have had his discharge when the government rested, or this instruction.

Thirty-eighth—(Folio 206.) This instruction, in any view of the case, which permitted the same to go to the jury, we were clearly entitled to have. Neither of the plaintiffs in error can ever be lawfully convicted as principals but only as accessories to Thomas, who verified the report. This is so apparent by the reasoning in the Potter case cited *supra* that we desire to make the same our own.

Thirty-ninth—(Folio 208 et seq.) The various errors set forth in the motion for a new trial have already been argued under the former specifications herein discussed.

Fortieth—(Folio 216 et seq.) The seven different grounds in the motion in arrest of judgment are principally discussed under specifications *one*, *five* and *fourteen* hereof. We particularly call attention, however, in the failure of the proof to sustain the allegations on the ground of variance in the fifth, sixth and seventh paragraphs of said motion.

Forty-first and *Forty-second*—We confidently think that upon the whole record the defendants were not subject to sentence and should have been discharged for the following reasons, among others:

1. Failure to allege who made the report of September 30.
2. Failure to allege who verified said report.
3. Failure to set out such report.

4. Variance between the report introduced and the indictment.

5. Failure as to any evidence of a guaranty.

6. Incompetency of Exhibit "A."

7. Insufficiency of proof as to Exhibit "C" in constituting any liability.

8. Insufficiency of proof as to either of the plaintiffs in error as principals.

9. Error in the evidence admitted over our objections.

10. Error in refusing to instruct for a verdict of acquittal.

11. Error in refusing evidence offered by plaintiffs in error.

12. Error in instructions given.

13. Error in instructions refused.

14. Error in overuling motion for new trial and motion in arrest of judgment.

Wherefore, for such manifest errors, the plaintiffs in error ask for a reversal of the judgment of the District Court, and for such directions to said Court as may accord with justice and right.

Respectfully submitted,

C. S. THOMAS,

E. F. RICHARDSON,

Attorneys for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
MAR 1 1895
JAMES H. McKENNEY,
CLERK.

157-286

157-286

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM H. COCHRAN AND ROBERT H. SAYRE, plaintiffs in error,
v.
THE UNITED STATES.
No. 815.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM H. COCHRAN AND ROBERT H. SAYRE, plaintiffs in error,
v.
THE UNITED STATES.
No. 815.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE UNITED STATES.

In the district court of the United States for the district of Colorado three indictments were found, on November 22, 1893, against William H. Cochran and Robert H. Sayre, to wit:

No. 959. Against William H. Cochran and Robert H. Sayre for making false entries in reports to the Comptroller of the Currency (p. 1).

No. 960. Against Robert H. Sayre, for making, and against William H. Cochran for aiding, abetting, and procuring the said Robert H. Sayre to make such false entries, etc. (p. 18).

No. 992. Against William H. Cochran, for making, and Robert H. Sayre for aiding, abetting, and procuring the said William H. Cochran in making such false entries, etc. (p. 35).

On motion to quash the indictments, counts 10, 11, and 12 were quashed (pp. 17, 34, 53).

On November 27, 1893, the defendants were arraigned, and upon their arraignment did severally plead "not guilty" to said indictments (pp. 15, 34, 51).

On May 11, 1894, the three cases were consolidated (pp. 35 and 53).

On June 6, 1894, the defendants were found "guilty" as charged in the first count of indictment (No. 960, p. 55).

The questions to be considered in this brief then will be confined to those which properly arise upon the errors assigned to the judgment of the court upon this verdict.

THE CASE.

The first count of No. 960 charges that Robert H. Sayre—William H. Cochran being then and there president; the said Robert H. Sayre being then and there assistant cashier of a certain national banking association, then and there known and designated as the First National Bank of Del Norte, Colorado—did make in a certain report of the condition of the First National Bank of Del Norte, in the State of Colorado, at the close of business on the 30th day of September, 1892, made to the Comptroller of the Currency, in accordance with the provisions of section 5211 of the Revised Statutes of the United States, a certain entry under the head of "liabil-

ities" in said report numbered "19," which said entry was then and there in the words and figures following, that is to say:

"19. Liabilities other than those above stated none," and which said entry so made in said report purported to show, and did, in effect, indicate and declare that said association had no other debt and liability other than those named and set forth in said report under the head of "liabilities."

That said entry, so made as aforesaid, was false in this, that the debts and liabilities set forth in said report under the head of "liabilities," did not name and set forth all the debts and liabilities of said association, as the said Robert H. Sayre then and there well knew.

That said entry was false in this, that said association was then and there indebted and liable to the Hanover National Bank of New York City in the sum of $5,000, evidenced by a certain promissory note, executed by the said Robert H. Sayre and one A. H. Clark, and payment thereof guaranteed by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

That said debt and liability of said association to said Hanover National Bank was not mentioned and set forth and included in any manner in said report, as the said Robert H. Sayre well knew; and that said false entry was feloniously made with a felonious intent on the part of said Sayre to injure and defraud said association, etc., and to deceive any agent appointed by the Comptroller of the Currency to examine the affairs of the said association. That William H. Cochran, being president of said asso-

ciation—and before said offense, as hereinbefore set forth, was committed—did unlawfully and feloniously counsel, aid, abet, and procure the said Robert H. Sayre to do and commit the said offense and misdemeanor in the manner and form aforesaid.

THE ASSIGNMENTS OF ERROR.

These are forty-three in number, and will be found on pages 108 to 116. They will be considered here in the order there presented.

I.

In overruling the motion to quash the first count in the indictment in No. 960.

The ground of this motion appears to be that no "liability" was imposed upon the First National Bank of Del Norte for the note for $5,000, made by Robert H. Sayre and A. H. Clark, the payment whereof was guaranteed by said association to said Hanover National Bank; and that because this note was not due when the report of September 30 was made that it did not constitute any liability on the part of the bank which had guaranteed its payment.

In his deposition, page 80, Mr. Sayre says:

> At the time I made this report to the Comptroller of the Currency this note was in existence, but was not due. I did not incorporate it in that report, because it did not belong there.

And Mr. Cochran, on page 87, says:

> I know all about Exhibit C, called the Hanover Bank transaction. * * * The bank failed Decem-

> ber 17, and the last note became due December 24. The note had nothing to do with the books of the First National Bank of Del Norte, because it was no part of the bank's business. The guarantee was a loan of credit of the bank to these parties and had nothing to do with the financial transactions.

The version of the transaction, as given by these defendants in their testimony, in explanation of their failure to enter this liability of the bank in their report to the Comptroller of the Currency affords the only ground on which they now rely to support their objection to the first count of the indictment. They proceed upon the notion that because the note, the payment of which was guaranteed by the bank, was *solvendum in futuro*, that, therefore, it could not be *debitum in presenti*.

To be sure, the liability of the bank was nominally that of guarantor; but in legal effect, it was that of a principal debtor.

The charge in the count is (p. 19) that "payment thereof (was) guaranteed by said association to said Hanover National Bank of New York City."

The contract of a guarantor is collateral and secondary. It differs in that respect, generally, from the contract of a surety, which is direct; but, as was said by the supreme court of appeals of Virginia in *Arents* v. *Commonwealth* (18 Grat., 770):

> But while this distinction exists in general between the contract of a surety and the contract of a guarantor, we must in every case look to the terms of the guaranty, and to the circumstances under which it was made, to ascertain by the rules of construction the character and extent of the undertaking. If it

> thus appears to have been the intention of the guarantor to make himself liable on the default of the principal debtor, without the use of the ordinary means to compel payment by him, or proof of his insolvency, he will be held liable accordingly. His contract, in such a case, is a guaranty of payment, or of punctual payment, by the principal debtor, and not merely a guaranty of solvency, or of ultimate payment after the usual means of enforcing it are employed.

In *City of Memphis* v. *Brown* (20 Wall., 310), the contract of guaranty was in the following words:

> The city of Memphis will, and does hereby guarantee to the contractors the payment of said accounts as so assessed against the property owner, or owners, for the pavement according to the plans and specifications.

As to which this court said:

> It will be perceived that this is a guarantee of payment and not of collection merely, and upon which, upon general principles of law, a suit may be commenced against the grantor without any previous suit against the principal.

See, too—

> *Luqueer* v. *Rosser* (1 Hill, 256);
> *Jones* v. *Dodd* (137 Mass., 121);
> *Jones* v. *Dodd* (142 Mass., 130);
> *Roberts* v. *Riddle* (79 Penn. St., 468);
> *Campbell* v. *Baker* (46 Penn. St., 243).

As we have seen, the charge in the indictment here (p. 19) as to the relation of the First National Bank of Del Norte to the Hanover National Bank of New York City is that as to the note for $5,000 *payment thereof*

was guaranteed by the former to the latter. The note was not sent to the New York bank for collection.

The note appears to have been renewed several times after its original discount by the New York bank, and its last renewal with the guaranty of payment indorsed thereon will be found on page 78.

In the letter of W. H. Cochran, president, of December 14, 1891, page 71, inclosing the original note to the New York bank, he requests the New York bank to "place to our credit the proceeds of the discount." From which it would appear that the note was the property of the First National Bank of Del Norte. And this only confirms the construction which the language of the contract of guaranty plainly imparts, that it was a direct promise of payment by the Del Norte bank to the New York bank.

But in any view that may be taken of it the contract of guaranty created and imposed upon the Del Norte Bank, is an actual, subsisting, present liability for the payment of the debt evidenced by this note, whether such liability be absolute or conditional, and whether the payment be present or future.

II.

In allowing the witness, Charles W. Thomas, to be asked the following question:

> Had you ever had any experience in a bank, or the business of a bank, before you came to Colorado?

To which the witness answered:

> I was never in a bank. After I returned from Colorado, I went in a bank about the 1st of January, 1890, in Portsmouth.

The proceedings will be found on page 61. The witness is there recited to have been called by "the people."

The question propounded to him was asked by counsel for the United States.

It was objected to by the defendants "because it was wholly immaterial and irrelevant."

The issue before the jury was whether the defendants, William H. Cochran and Robert H. Sayre, had made, or had aided and abetted each other in making "false entries" in the official report of the Del Norte bank to the Comptroller of the Currency.

The witness Thomas was, at the period of the offense charged, the cashier of the bank. He was called on behalf of the United States to maintain the affirmative of the issue. The weight to be given to his testimony must depend in large measure upon the degree of intelligent familiarity he exhibits with the subject of which he speaks. If he was skilled and experienced in the conduct of banking business, he would be better qualified to explain to the jury and the court the character and significance of the entries appearing in the reports of the bank. And it was undoubtedly proper that the jury should be informed of the opportunities he had had of acquiring such an experience and of the extent to which he had availed himself of such opportunities. And so, on the other hand, if he had been called to the exercise of the important and responsible duties of cashier of a national bank, without any previous knowledge of the business, and his discharge of such duties was perfunctory and nominal, and it appeared that the defendants here knew of

such inexperience, and with that knowledge procured his appointment as cashier, the evidence offered was clearly admissible as bearing upon the question of criminal intent of the defendants in making the alleged false entries or causing them to be made.

This witness, Thomas, testified (p. 66):

> That he was one of the original incorporators of the bank; * * * that before he became cashier of the First National Bank of Del Norte he had been in the bank about two weeks. He knew that Cochran had never been in the banking business before that time; he did not know how long Sayre had been in the banking business.

And on page 61:

> He had known of the intention of Cochran and others to organize a national bank at Del Norte by correspondence before he came out and by talk when he was out before; that Cochran first suggested the idea; that the organization papers for the bank were out before witness left Ohio.

III.

In permitting the attorney for the Government to ask the witness, Thomas, the following question:

> When the Comptroller would call on the bank for statements, what was your habit as to taking any part in the getting up of those statements?

The answer of the witness that he "never made any statements," would seem to render unnecessary any further consideration on the merits of this alleged error, although it is evident that the word "habit" employed

in the question did not relate to the *personal* habit of the witness; but to the usual course of business in the office of cashier of the bank, which the witness held. The duties of cashier, when not prescribed by statute, varied in different banks, and the object of the question here was to ascertain the course of business in the cashier's office in the Del Norte bank.

IV.

In permitting the attorney for the United States to ask the witness, Thomas, the following question:

> Now, Mr. Thomas, was that note what you call in its present condition a rediscounted note? And in permitting the witness to answer the question, "yes, sir."

The note had been handed to the witness and examined by him. The question was one which might, with propriety, have been put to any bank officer, to wit: Whether the characteristics, features, and badges appearing on the note, indicated to him as a bank officer that the note had been rediscounted.

The witness had previously testified (p. 64) that his information as to "the shape it was in had been derived from Mr. Lazear on December 17, 1892."

The objection urged by defendants to the question put to the witness was (p. 64) that he knew nothing about banking business and was, therefore, incompetent to answer the same. But it had certainly appeared from the witness's testimony that he was the cashier of this bank through the whole period of its existence; and however meager or inadequate his previous knowledge of the bank-

ing business had been, it was for the jury to determine what degree of weight his testimony was entitled to receive. The objection was not to the materiality or relevancy of the evidence, but to the weight and sufficiency of it; and that was an objection to be addressed to the jury and not to the court.

V.

In permitting the attorney for the United States to introduce in evidence the report of the First National Bank of Del Norte to the Comptroller of the Currency, dated September 30, 1892, the same being referred to and marked in the bill of exceptions as Exhibit A.

The grounds of this objection appear on page 65, and are: (1) Because the indictment charges the defendants, the one as president and the other as assistant cashier of the bank, with making the reports, while the report itself appears to have been made and verified by Charles W. Thomas, cashier, and to have been signed by different parties as directors of the bank. (2) Because neither of the defendants can be convicted under the indictment as principals with regard to making the said report, but only as accessories, under section 5209. (3) That no one except him who verified the reports can be convicted under said indictments, or either of them.

These objections proceed from erroneous and inaccurate views of the facts as well as the law.

Section 5209 provides—

> Every president, director, cashier, teller, clerk, or agent of any association * * * who makes any false entry in any book, report, or statement of the

> association, with intent in either case to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person, who with like intent, aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more then ten.

Section 5211 provides—

> Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signatures of at least three of the directors. Each such report shall exhibit, in detail and under appropriate head, the resources and liabilities of the association at the close of business on any past day by him specified.

It is then the *association* who shall make to the Comptroller of the Currency the reports required by the statute. To be sure, a national-banking association, like every other corporation, can act only through its officers and agents.

The penalty in 5209 is imposed, not for the making of a report, but for making a false entry in a report.

Section 5211 provides that the reports therein required "shall be verified by the oath or affirmation of the president or cashier of such association and attested by the signature of at least three of the directors."

The indictment here charges the defendant, Sayre, with making, "in a certain report of the condition of the First National Bank at Del Norte, in the State of Colorado, at

the close of business on the 30th day of September, 1892, * * * a certain entry," which it goes on to charge was a false entry—such a false entry as any president, director, cashier, teller, clerk, or agent might make and be punished for making under section 5209.

These two sections, taken together, show that while the reports required to be made under 5211 must be verified by the oath or affirmation of the president or cashier in order to be valid official reports of the association, yet that the false entries referred to in 5209 may be made by anyone holding any official or fiduciary relation to the association.

The report of September 30, 1892, containing the false entries, for making which the defendants here were convicted, is verified by the affidavit of Charles W. Thomas, the cashier of the bank, and is attested by the signatures of three directors, one of whom was W. H. Cochran, who was the president of the bank; while the name of Robert H. Sayre, who is charged in the indictment with having made the false entry, nowhere appears on the report.

The argument of the defendants is, that the report should not have been received in evidence against Robert H. Sayre, because he was only "assistant cashier," and the statute requires that the report shall be verified by the oath of the president or cashier; and that it should not have been received in evidence against W. H. Cochran, who is charged with aiding and abetting Sayre, because aiding and abetting a principal in making a false entry in a report to the Comptroller is not an offense under the statute.

In *United States* v. *Potter* (56 Fed. Rep., 93), it was held that an indictment charging directors of a bank, in their official character, with making false entries and reports to the Comptroller, could not be sustained because by the statute such reports are required to be made "by the association" and verified by the oath of the president or cashier, and attested by three of the directors. The court said (p. 94):

> Presumably these reports are made by the cashier or president, who as the executive officers are authorized to verify them, and presumably any entry made in them by any other person would not be a false one within the meaning of the statute, but fictitious, forged, or otherwise unauthorized.

I venture to suggest, with deference, that the learned judge appears in this opinion to confound the making of reports to the Comptroller by the association with the making of false entries in such reports by officers or agents of the association. Elsewhere the learned judge says that section 5209 must be construed distributively; and that the making of a false entry in a report to the Comptroller, like the certification of a check, can be made only by the president or cashier of a bank.

It is undoubtedly true, as has been held, that a president or cashier can not avoid the penalties prescribed for making false entries in reports to the Comptroller, by showing that the false entries appearing in such a report, verified by him, were made by some subordinate officer or agent of the bank, because the statute has imposed upon him the duty of knowing that what he purports to verify is in fact the truth. But, does the fact that the president

or cashier is thus made liable for such false entries preclude the liability of other officers or agents by whom such entries were in fact made?

The indictments in *United States* v. *Potter*, etc., were against Potter as president and French and Dana as directors of the Maverick National Bank. The demurrers to the indictments against French and Dana were sustained on the ground stated on page 93 that—

> Their specific duties as to such reports are covered by the words and attested by the signatures of at least three of the directors. By the statute these reports are required to be made "by the association" and to be "verified by the oath of the president or cashier." * * * The indictments allege, in conformity with the statute, that the reports were made by the association. They do not charge that French or Dana made the reports, or had any authority to make them, or that they were made by order of the directors, including French and Dana. * * * Presumably these reports are made by the cashier or president, who, as the executive officers, are authorized to verify them; and, presumably, any entry made in them by any other person would not be a false one within the meaning of the statute, but fictitious, forged, or otherwise unauthorized. I make, however, the qualification that if the indictments alleged that the directors, as a board, or otherwise, including the accused, authorized a report false in whole or in part, the case might stand differently.

But the statute expressly requires that the report shall be made "by the association." It imposes upon the president or cashier the duty to verify, and upon any three of the directors the duty to attest. If those who attest can

In *United States* v. *Potter* (56 Fed. Rep., 93), it was held that an indictment charging directors of a bank, in their official character, with making false entries and reports to the Comptroller, could not be sustained because by the statute such reports are required to be made "by the association" and verified by the oath of the president or cashier, and attested by three of the directors. The court said (p. 94):

> Presumably these reports are made by the cashier or president, who as the executive officers are authorized to verify them, and presumably any entry made in them by any other person would not be a false one within the meaning of the statute, but fictitious, forged, or otherwise unauthorized.

I venture to suggest, with deference, that the learned judge appears in this opinion to confound the making of reports to the Comptroller by the association with the making of false entries in such reports by officers or agents of the association. Elsewhere the learned judge says that section 5209 must be construed distributively; and that the making of a false entry in a report to the Comptroller, like the certification of a check, can be made only by the president or cashier of a bank.

It is undoubtedly true, as has been held, that a president or cashier can not avoid the penalties prescribed for making false entries in reports to the Comptroller, by showing that the false entries appearing in such a report, verified by him, were made by some subordinate officer or agent of the bank, because the statute has imposed upon him the duty of knowing that what he purports to verify is in fact the truth. But, does the fact that the president

or cashier is thus made liable for such false entries preclude the liability of other officers or agents by whom such entries were in fact made?

The indictments in *United States* v. *Potter*, etc., were against Potter as president and French and Dana as directors of the Maverick National Bank. The demurrers to the indictments against French and Dana were sustained on the ground stated on page 93 that—

> Their specific duties as to such reports are covered by the words and attested by the signatures of at least three of the directors. By the statute these reports are required to be made "by the association" and to be "verified by the oath of the president or cashier." * * * The indictments allege, in conformity with the statute, that the reports were made by the association. They do not charge that French or Dana made the reports, or had any authority to make them, or that they were made by order of the directors, including French and Dana. * * * Presumably these reports are made by the cashier or president, who, as the executive officers, are authorized to verify them; and, presumably, any entry made in them by any other person would not be a false one within the meaning of the statute, but fictitious, forged, or otherwise unauthorized. I make, however, the qualification that if the indictments alleged that the directors, as a board, or otherwise, including the accused, authorized a report false in whole or in part, the case might stand differently.

But the statute expressly requires that the report shall be made "by the association." It imposes upon the president or cashier the duty to verify, and upon any three of the directors the duty to attest. If those who attest can

not be held liable for making false entries in the report, how can those who verify the report be held so liable? The attestation of the report would seem to be as essential to its making as the verification of it, and if the ground for holding the president and cashier who verified a report liable for false entries in it was because they are executive officers, on what ground can it be maintained that "this case might stand differently" if "the indictments alleged that the directors, as a board, or otherwise, including the accused, authorized a report in whole or in part?"

The "association" can act only through its officers and agents in making these reports. And when the statute provides that the officers or agents of the association who make false entries in such reports shall be held liable, does it not plainly mean that any officer or agent of the association, who in the line of his official duty was bound to contribute the information to be contained in such report, intentionally gave false information, which did appear as an entry in the report, that he should be held liable for making such false entry?

The report, we submit, is made as well by the attesting directors as by the verifying officers. Suppose one of the attesting directors knew that an entry contained in the report was false, although such entry appeared on the book of the bank from which alone that fact could be derived, and the officers who verified and the other two directors who attested the report had exhausted all sources of information as to the correctness of the entry before making the report and believed it to be true, can it be said that the guilty director shall not be held liable for making such false entry?

The opinion from which we have quoted holds, page 94, that—

> That portion of section 5209 which punishes those who aid or abet is especially apt to reach them.

But can such director be held as an "aider and abettor" when there is no principal by whom the offense was committed?

Does not the statute plainly recognize the fact that the furnishing the items of a report, as well as the incorporation of them into the body of the report, were to be performed by officers and agents of the bank other than the president and cashier? And that Congress had in view the rule of criminal law that all concerned in the commission of a misdemeanor are principals in the offence (Bish. Crim. Law, 7 ed., sec. 656, 685, and *United States* v. *Mills*, 7 Pet., 138), and intended that any officer or agent directly connected with the furnishing of false information for insertion in a report, or who made knowingly a false entry in such report with a fraudulent intent, etc., should be punished equally with the one who knowingly verified a report containing a false entry. (See *United States* v. *French*, 57 Fed. R., 386.)

There must be a principal in every crime. Thomas, the cashier who made the report, having no knowledge of the falsity of the entry, and innocent of any intent to commit crime, can not be charged; but Sayre, the assistant cashier, who made the false entry knowingly, was properly charged as principal. And if Sayre was the guilty agent or accomplice of Thomas in writing the entry, he would still have been a principal under the rule

that, where the acts of several constitute a crime, all are principals as to the whole. (Bish., sec. 650.) The principle here is the same as in forgery, that "a person whose own hand does the criminal act, either in whole or in part, is not an accessory," but a principal.

If bigamy and rape and such like felonies may be committed by third parties, as in the case of rape by a woman (*Regina* v. *Crisham*, Carr and M., 187; *Rex* v. *Gray*, 7 Carr and P., 164; *Bogus* v. *State*, 34 Ga., 275), surely the actual maker of a false entry can be charged with having committed the offense.

While the president of a bank, as one of the officers enumerated in the statute relating to principals in the offense of making false entries, might have been charged with Sayre jointly as principal, yet, if the president did not personally participate in the preparation of the report, but merely counseled and encouraged Sayre to make the false entry, as an accessory before the fact, he was properly charged as an aider and abettor of the principal. While in fact an accessory, he was in law a principal. The objection, let it be remembered, was to permitting the attorney for the United States to introduce the report of the Del Norte bank in evidence before the jury.

The indictment charged that a report of the condition of the bank had been made to the Comptroller of the Currency in accordance with provisions of section 5211. The indictment did not set out the report thus charged to have been made, but the report offered in evidence, the admission of which was objected to, was offered as the report so charged to have been made. Whether it was such report, made in accordance with section 5211, might

well depend upon extraneous proof. It was verified by the cashier, and was attested by three directors. It was properly left for the jury, therefore, to say, under the instructions of the court, after all the evidence was in, whether it was such report as was provided for by section 5211.

The testimony of all concerned in this transaction leaves the question of who actually made this report absolutely free from doubt.

Robert H. Sayre, one of the defendants, referring to this report of September 30, as Exhibit A, says (p. 79):

> I was working in the First National Bank of Del Norte (on December 30, 1892); have seen Exhibit A before. I made out the paper just prior to the 30th of September; it was made as a report to the Comptroller of the Currency. (And on p. 81.) The report of September 30 is my handwriting. Mr. Cochran may possibly have been around when I was making it out; I don't know that he was usually present when these reports were made out. He was practically at the bank every day when he was in Del Norte. He took an active interest as president in the affairs of the bank, but I don't think he signed all reports to the Comptroller. He usually signed them because he was president. His signature is to the report of September 30. I don't say that he knew nothing about the report. I don't say he helped me. I suppose he knew because he signed it. I don't remember that he examined it, but suppose it is in the natural order of his business to make an examination of it. I think he was familiar with the affairs of the bank. (And on p. 85.) I filled out ten or half dozen of these reports to the Comptroller of the Currency, and they correspond exactly to my general balance book here, every one of them.

William H. Cochran, the other defendant, testified (p. 86):

> I assisted in making out the first two or three reports that were made to the Comptroller of the Currency. Exhibit A is a report showing the condition of the bank on September 30, 1892. I had nothing whatever to do with its preparation. * * * My signature is attached to it. I looked over the report carefully to see that it corresponded with the general balance book and the books of the bank before I signed it, and it was correct in every particular. I had nothing to do with it until after it was made up and it was submitted to me by the cashier, Mr. Thomas, and the assistant cashier and bookkeeper, Mr. Sayre.

Charles W. Thomas, testified (p. 66) that he "was one of the original incorporators of the bank." The witness' attention being called to the specific statements on which the defendants were indicted (p. 62)—

> The witness then further gave evidence tending to show that the statements were handed to him, and they told him that the statements were all right and he would sign them. * * * The reports were never made out by witness, but by some one else; they were made out mostly by Sayre, sometimes under the direction of Cochran and sometimes written out by other parties in the bank. The original was usually made to send on, and the bank kept what was known as a duplicate. When they were being prepared Sayre and Cochran would go over the books, getting up the figures to put in them. Mr. Cochran was not there every time, but most every time. He was there during the getting up of the statements in 1892. Witness saw Cochran and Sayre working over the books, and knew each time when they were called

> upon by the Comptroller for a statement of the condition of the bank. I was not there all the time, but I think I was there when the statements were gotten up in March, May, July, September, and December. Sayre and Cochran got them up and I signed them. * * * The statement of September 30 was made out by Robert H. Sayre.

We have heretofore seen that there was evidence before the jury tending to show that Robert H. Sayre was the real cashier of the bank and that Thomas, after the first two months of the bank's existence, ceased to be such cashier.

We submit that it was for the jury alone to determine, from all the evidence in the case, what the official character, duties, conduct, and acts of the parties were; and that the materiality and relevancy to the issue of the report of September 30, 1892, was too apparent to the court to justify the rejection of such report as evidence in the cause, leaving its materiality and weight to be determined by the jury.

VI to XIII.

These are objections made by the defendants to certain questions asked by counsel for the Government.

We think they hardly justify any extended consideration here. The obvious answers to the objections will be indicated in the oral argument of this cause.

XIV to XXI

Are objections to questions put by counsel for the Government on the cross-examination of the defendant, Robert H. Sayre, who was testifying as a witness in his own behalf.

An examination of these questions will, we are persuaded, satisfy the court that they are very far within the limits allowed to counsel on cross-examination.

If the court did err in refusing to instruct the jury to bring in a verdict for the defendant at the close of the case made by the Government, that error was waived by the defendant by thereafter offering his own evidence. (*Runkle* v. *Burnham*, 153 U. S., 222.) Sayre had admitted that he kept the books of the bank, made the entries therein, and had made the report to the Comptroller of September 30. It was surely competent on cross-examination to obtain from this witness the explanations he might have to offer of the entries made therein by him. And surely he can not be heard to complain of this course of examination, because of the opportunity it afforded him of exonerating himself from the charge of evil intent.

XXII.

The refusal of the court to allow the defendant, Sayre, to be asked how the report of December, 1892, came to be made can not constitute error here, because the verdict of the jury found the defendants guilty only of false entries made in the report of September 30, 1892; and the report of December, 1892, is not involved here.

XXIII.

The question to Cochran on cross-examination tended to elicit any confession which Sayre, the defendant, might have made to him as to the entry "none," made by Sayre in the report; and also any personal knowledge which the witness might have of the matter.

The remaining errors assigned are to the instructions given and refused by the court.

XXIV TO XXVIII.

The count on which the defendants were convicted charges them with making a false entry in a report to the Comptroller of the Currency. That false entry is specified in the count to consist of this: The report under the head of "Liabilities" enumerates eighteen classes of liability. Then the entry "19" is "Liabilities other than those above stated." Of these the defendants in their report had made the entry "none." Whereas, the count charges the association was at that time—

> Indebted and liable to the Hanover National Bank of New York City in the sum of $5,000, evidenced by a certain promissory note, executed by the said Robert H. Sayre and one A. H. Clarke, *and payment thereof guaranteed* by said association to said Hanover National Bank of New York City, as he, the said Robert H. Sayre, then and there well knew.

The defense relied on to this charge is—

(1) That the Del Norte bank was not liable for this note, because the note was not due at the time the report of September 30, 1892, was made, and because, in guaranteeing the payment of this note, the bank was merely "lending its credit" to the makers of the note, and that the real transaction was not between the makers of the note and the Del Norte bank, but between such makers and the New York bank which loaned the money on the note.

But we will see from the evidence, as the jury found, that this view is not sustained by the facts or the law.

Mr. Sayre testified (p. 80):

> At the time I made this report to the Comptroller of the Currency this note was in existence but was not due; I did not incorporate it in that report, because it did not belong there. I borrowed the money—understood that I borrowed the money—from the Hanover National Bank of New York. The First National Bank of Del Norte had nothing to do with it, only guaranteeing its payment. As soon as the letter of advice was received from the Hanover National Bank, showing that they had discounted, I think that it was transferred to my credit.

And *Mr. Cochran*, the other defendant (p. 89), said:

> That the First National Bank of Del Norte did not advance this money when the transaction of the $5,000 note of Sayre and Clarke first occurred.
>
> No, sir, not at all; did not give the credit until after the note had been sent to the Hanover National Bank and returned to Charles W. Thomas as credited with the proceeds of the note, which was something less than $5,000. I am sure that is the case, but do not definitely remember the date of the first note. * * * On the 21st was not time for it to get back. * * * It seems on December 26, as soon as it could get back from New York, he deposited a thousand dollars. It is nowhere shown on the books where he got the amount of this note. I do not think the books show the date and t me upon which Mr. Sayre got the proceeds of the note and also the disposition of the $5,000.

Now, let us look into this matter a little more closely and see if these two defendants are accurate in the state-

ment on which they seem to have agreed, that credit was not given the makers of this $5,000 on the books of the Del Norte bank until after the New York bank had notified them that it had discounted the note.

On page 71 appears a letter from William H. Cochran president, to the New York bank. It is dated December 14, 1891. It says, *inter alia:*

> We inclose a note of $5,000, signed by Sayre and Clarke, guaranteed by us, which please place to our credit. We do not want it now, but want to be prepared with a good New York account.

It appears on page 70, from the testimony of Logan, a clerk of the New York bank, that the note for $5,000 inclosed in the letter of December 14, 1891, was "dated 18th day of December, 1891, which was discounted by the Hanover National Bank on the 21st day of December, 1891, for account of the First National Bank of Del Norte, which was the original transaction for the same amount executed by the same parties."

On page 90 Mr. Cochran, the defendant, after giving the testimony above quoted, was thus addressed on cross-examination with the books of the bank before him:

> Q. Mr. Cochran, will you please step here. [His attention is directed to an account.] What do you find under the head of R. H. Sayre? What do you find as of date December 15, 1891?
>
> A. I find that Sayre is credited with $5,000.
>
> By the COURT:
>
> Q. Is that the proceeds of this note? Let us see if that is the proceeds of the note. Read the whole explanation—what it shows.

> A. On the other day Mr. Sayre was charged with $2,000 and credited with $5,000. I can't say where he gets the credit from, but it appears under the head of deposits. I presume it is the proceeds of the first note, of which this note is a renewal. I do not know it to be a fact. I have no way of knowing without looking the matter through. I presume that is the proceeds of the $5,000; I think so, etc.

From all which it seems that the loan to Sayre and Clarke was made directly by the Del Norte bank; that that bank took the $5,000 note as a security for this loan; it sent that note to the New York bank, and it succeeded, by virtue of its contract of guaranty and of the statements made in the letter of December 14, in having the note discounted by the New York bank. And very manifestly the proceeds of that discount were not to be paid to the makers of the note, because Mr. Cochran, president, in his letter of December 14, to the New York bank, said:

> Please place to our credit. We do not want it now, but want to be prepared with a good New York account.

We have shown that a guaranty of payment created an immediate liability, which a guaranty for collection might not have done.

But here was a direct loan from the New York bank to the Del Norte bank, which was secured by this contract of guaranty; and that loan, it is admitted on all hands, did not appear on the books of the Del Norte bank, and did not appear in the report of the Del Norte bank to the

Comptroller of the Currency. But in item 19 of that report is the express entry and declaration that no such loan or liability existed.

Now, this is the only item charged in the count, which also charges that the entry thus made in the report was a false entry; that it was feloniously made, with a felonious intent on the part of Sayre to defraud and deceive, as stated in the count.

It was upon this state of facts that the court gave the instructions which were objected to.

The twenty-fourth, twenty-fifth, and twenty-sixth instructions are on the two hypotheses—first, that the loan to Sayre and Clarke was made directly by the Del Norte bank. The court charged that in that case the note should have appeared in the report among notes and bills rediscounted. Secondly, that if the loan was not made primarily by the Del Norte bank, and that the making of the note by Sayre and Clarke, and the guaranty of its payment by the Del Norte bank, were all parts of the same transaction, done at the same time, for the purpose of having the note discounted by the New York bank; that the note was accommodation paper; and that the bank of Del Norte stood as the maker of the note, and that in that view the note should have appeared in the report among "bills payable."

Of the correctness of the views stated in these instructions there can be no reasonable doubt.

Of the twenty-seventh instruction we need say nothing, having already considered the question whether the bank's liability depends upon the fact that the note was not yet due.

XXVIII.

The ground of the objection here is somewhat obscure. The language excepted to is "this note was omitted from the books of the bank also; the omission must have been in order that the fact of the existence of this liability on the part of the bank should not come to the knowledge or notice of the agents, &c. * * * There must have been the element of concealment in it."

If the objection implies that the use of the word "must" imports the expression of an opinion on the part of the court, that from the evidence there must have been an intent to conceal on the part of the defendants, manifestly that was not the meaning of the court, nor is it the import of the language. The instruction is altogether in favor of the defendants. It announces to the jury that the burden of proof is on the Government to show from the evidence not only that there was an omission upon the books of the bank, but that that omission must have been with intent to conceal, &c.

By reference to page 95, where this extract appears in the body of the charge of the court, it will be seen from the immediate context what meaning was on the mind of the judge and what meaning was necessarily conveyed to the jury. The next preceding paragraph shows that the paragraph excepted to was but part of that portion of the charge which related to *intent*. He says:

> And there is no doubt but that intent must exist in order to make the party liable under this statute; that is to say, if the omission was ignorantly made. If it was omitted merely out of stupidity and because

the parties did not understand what was required of them, there is no offence under the statute. The statute relates to intention of wrong doing.

XXIX.

This exception is to substantially the same effect.

XXX.

The substance of this instruction is embraced in the general charge on page 95, not as a definition of a false entry, but as to the necessity of proving a criminal intent, and so, too, on pages 97 and 98.

No. 31. The instruction here asked for and refused is taken from a charge to the jury delivered by Judge Woolson, the district judge of Iowa, in *United States* v. *Graves* (53 Fed. Rep., p. 646). Apart from the fact that this charge could hardly have been relied on as an authority to control the judge of any other Federal court, it will be further seen from an examination of the case in which it was delivered that the language quoted in the instruction, if a correct exposition of the law in any case, could certainly have no application here. In the case in which it was given, it appeared that certain items which appeared on the books of the bank under the head of "loans and discounts" had been temporarily withdrawn from that heading, and were carried from day to day on the books of the bank under an improvised heading of "suspended loans" while awaiting the action of the directors as to entering them up as a loss on the profit and loss account.

We venture to commend the charge in *United States* v. *Graves*, however, to the consideration of the court here as sustaining the view taken by the court below in this case as to the impropriety of placing under "loans and discounts" what in fact are overdrafts.

32. If given would have been misleading and incorrect, besides having no sort of application to the only count on which the defendants were convicted.

33. The instruction asked for was incorrect for reasons already fully stated in other connections.

34. The court was asked to instruct the jury that the defendants should not have entered in a report to the Comptroller of the Currency an item which did not appear on the books of the bank. That is, that if the officers of a bank desired to create a false impression on the mind of the Comptroller of the Currency, or of anyone else interested in knowing the true condition of the bank's affairs, it would be only necessary to withhold from the books of the bank entries of the bank's liabilities to justify them in stating in their report to the Comptroller that no such liabilities existed.

35. The instruction asked for did not relate to the subject-matter of the count on which the defendants were convicted.

36 and 37. The definition of a reasonable doubt and the instruction that the matters charged are to be established in the minds of the jury, beyond such reasonable doubt, fully appears on page 98.

38. This matter has heretofore been fully considered.

It only remains to consider now, briefly, how this liability of the Del Norte bank to the New York bank for $5,000 should have appeared in the report to the Comptroller.

We have heretofore seen that it was in fact a loan from the New York bank to the Del Norte bank, secured by the note for $5,000. Mr. Lazear, the national-bank examiner, testified (p. 77) that if it did not appear in number 17 or 18 it should have appeared in number 19 under the head of "Liabilities."

As to the admissibility of the bank examiner's testimony, and the weight to be attached to it, we refer to *United States* v. *Allen* (47 Fed. Rep., 696).

HOLMES CONRAD,
Solicitor-General.

157-301

157-301

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 755.

JAMES H. REAGAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED JULY 16, 1894.

(15,639.)

(15,639.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 755.

JAMES H. REAGAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Stipulation as to transcript	2	1
Indictment No. 791 A	3	2
Indictment No. 792	4	2
Indictment No. 793	5	3
Indictment No. 794	6	4
Order of consolidation	7	5
Extract from charge to jury	8	5
Judgment	8	5
Motion for new trial	10	7
Order overruling motion for new trial	15	10
Order granting time to file bill of exceptions	16	11
Sentence	16	11
Assignment of errors	17	12
Bill of exceptions No. 1	19	13
Motion for ten peremptory challenges overruled	19	13
Bill of exceptions No. 3	21	14
Motion for new trial overruled	21	14
Petition for writ of error	21	15
Petition for bail	22	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 22, 1894.

	Original.	Print.
Order granting writ of error and bail	23	16
Writ of error (copy)	23	16
Citation (copy)	24	17
Statement of evidence	26	18
Testimony of T. A. Cunningham	26	18
Ben. A. Borum	32	22
C. O. Fisher	37	25
James Borum	49	33
Lee Cochran	52	34
D. R. McCormick	61	40
Patricio Guerro	67	44
John Doak	68	44
D. G. Franks	69	45
John Doak (recalled)	73	48
T. A. Cunningham (recalled)	74	48
J. F. McKee	80	53
Alonzo Franks	82	53
Oscar de Montell	88	58
James Levingston	96	63
J. M. Levingston	99	64
James H. Reagan	101	65
Stenographer's certificate	110	71
Certificate of registration of marks and brands	111	71
Bill of sale from J. H. Reagan to Ed. and Bladen Ramsey, July 6, 1891	112	72
Bill of sale from J. H. Reagan to Lee Reagan, October 15, 1892	114	73
Register of chattel mortgages, &c	115½	75
Bill of sale from Ed. and Bladen Ramsey to J. H. Reagan, July 6, 1891	115	74
Testimony of H. C. Carter	119	78
Stenographer's certificate	122	79
Agreement of counsel as to statement of evidence	122	80
Order extending time to docket cause in Supreme Court U. S	123	80
Clerk's certificate	125	80

1 In the Circuit Court of the United States for the Western District of Texas, at El Paso.

THE UNITED STATES *vs.* JAMES H. REAGAN. } No. 791 A, Consolidated with Nos. 792, 793, and 794.

Be it remembered that at a regular term of said court begun and holden on the second day of April, 1894, at El Paso, in the western district of Texas, before the Hon. T. S. Maxey, judge thereof—D. H. Hart, clerk of said court, and R. C. Ware, marshal of said district, and R. U. Culberson, Esq., United States district attorney for the western district of Texas, being present—the above-entitled cause was called for trial, and the following proceedings were had therein, to wit:

2 *Stipulation as to Transcript.*

SAN ANTONIO, TEXAS, *May* 14, 1894.

It is agreed that the following papers and in the order following shall constitute the transcript of the record in the case of James H. Reagan, plaintiff in error, *vs.* The United States, defendant in error:

½. Caption.*
1. Stipulation as to transcript.
2. Copies of the four indictments in cases 791, 792, 793, and 794.
3. The order of consolidation.
4. The extract from the charge of the judge complained of in defendant's motion for a new trial.
5. The judgment.
6. Defendant's motion for a new trial.
7. Judgment or order overruling motion for new trial.
8. Order giving ten days in which to prepare and file bills of exception.
9. Sentence.
10. Assignments of error.
11. Bills of exception.
12. Petition for writ of error and order thereon.
13. Writ of error.
14. Citation in error and endorsement.
15. Statement of facts or evidence.
16. Bail bond.
16½. Order of judge enlarging time.
17. Certificate of clerk.

F. B. SEXTON,
Att'y for Jas. H. Reagan.
R. U. CULBERSON,
Att'y for the U. S.

3 *Indictment No. 791 A.*

THE UNITED STATES OF AMERICA:

In the Honorable United States District Court for the Western District of Texas, Sitting at and in the City of El Paso, within said District, at its October Term, A. D. 1893.

In the name and by the authority of the United States of America comes our grand jury of the United States of America and western district of Texas and the El Paso division thereof, and, being first duly selected, tried, empanelled, and sworn and charged, upon their oaths in open court do present—

That on the 4th day of April, A. D. 1893, and in the county of —— and western district of Texas and within the jurisdiction of this court, one James H. Reagan did unlawfully, fraudulently, wilfully, and knowingly and with intent to defraud the United States of America receive into his possession and conceal forty head of horned cattle, a further description of which is impractical in this finding on account of length, but will be described on trial by proof, of the value of four hundred dollars, subject to duty and which should have been invoiced; which said forty head of horned cattle had then and there been unlawfully, wilfully, and knowingly, and with intent to defraud the United States revenues, smuggled and clandestinely introduced into the United States from the Republic of Mexico by some person to the grand jury unknown, without paying or accounting for the duties by any one, he, the said

4 James H. Reagan, then and there well knowing said 40 head of cattle to have been smuggled, as aforesaid, contrary to the statute and against the peace and dignity of the United States of America.

NOYES RAND,
Foreman of the Grand Jury.

Endorsed: No. 791 A. Indictment. The United States *vs.* James H. Reagan. Smuggling. Government witnesses: Lee Cochran, Fred. Smart, J. L. Borroum, Adolph Burrell, Tom Cunningham, & D. L. Anderson. Filed Oct. 6th, 1893. D. H. Hart, clerk, by Warner A. Gibbs, deputy.

Indictment No. 792.

THE UNITED STATES OF AMERICA:

In the Honorable United States District Court for the Western District of Texas, Sitting at and in the City of El Paso, within said District, at its October Term, A. D. 1893.

In the name and by the authority of the United States of America comes our grand jury of the United States of America and the western district of Texas and the El Paso division thereof, and, being

first duly selected, tried, empanelled and sworn, and charged, upon their oaths in open court do present—

That on the 3rd day of May, A. D. 1893, and in the county of —— and western district of Texas and within the jurisdiction of this court, one *one* James H. Reagan did unlawfully, fraudulently, wilfully, and knowingly and with intent to defraud the revenues of the United States, receive into his possession and conceal twelve head of horned cattle, branded in part thus ×— on side, and × on thigh, and in part ×— on side, of the value of $120.00, subject to duty and which should have been invoiced; which said cattle aforesaid had then and there been unlawfully, wilfully, and knowingly, and with intent to defraud the revenues of the United
5 States, smuggled and clandestinely introduced into the United States from the Republic of Mexico, by some person to the grand jury unknown, without paying or accounting for the duty thereon by any one, he, the said James H. Reagan, then and there well knowing said aforesaid cattle to have been smuggled, as herein set out, contrary to the statute and against the peace and dignity of the United States of America.

NOYES RAND,
Foreman of the Grand Jury.

Endorsed: No. 792. Indictment. The United States *vs.* James H. Reagan. Smuggling. Government witnesses: L. Cochran, D. R. McCormick, Fred. Smart, D. L. Anderson, W. W. McCormick, T. A. Cunningham, Will. Freeman. Filed Oct. 6th, 1893. D. H. Hart, clerk, by Warner A. Gibbs, deputy.

Indictment No. 793.

THE UNITED STATES OF AMERICA:

In the Honorable United States District Court for the Western District of Texas, Sitting at and in the City of El Paso, within said District, at its October Term, A. D. 1893.

In the name and by the authority of the United States of America comes our grand jury of the United States of America and the western district of Texas and the El Paso division thereof, and, being first duly selected, tried, empanelled and sworn and charged, upon their oaths in open court do present—

That on the 11th day of May, A. D. 1893, and in the county of —— and western district of Texas and within the jurisdiction of this court one *one* James H. Reagan did unlawfully, fraudulently, wilfully, and knowingly, and with intent to defraud the revenues of the United States, receive into his possession and conceal fifteen 15) head of cattle, originally branded "× — ×," of the value of one hundred and fifty dollars, subject to duty, and which should have been invoiced; which said cattle had then and there been
6 unlawfully, wilfully, and knowingly, and with intent to defraud the revenues of the United States, smuggled and clan-

destinely introduced into the United States from the Republic of Mexico by some person to the grand jury unknown, without paying or accounting for the duties by any one, he, the said James H. Reagan, then and there well knowing said aforesaid cattle to have been smuggled, as herein set out, contrary to the statute and against the peace and dignity of the United States of America.

NOYES RAND,
Foreman of the Grand Jury.

Endorsed: No. 793. Indictment. The United States *vs.* James H. Reagan. Smuggling. Government witnesses: Lee Cochran, D. L. Anderson, W. W. Choate, C. O. Fisher. Filed Oct. 6th, 1893. D. H. Hart, clerk, by W. A. Gibbs, deputy.

Indictment No. 794.

THE UNITED STATES OF AMERICA:

In the Honorable United States District Court for the Western District of Texas, Sitting at and in the city of El Paso, within said District, at its October Term, A. D. 1893.

In the name and by the authority of the United States of America comes our grand jury of the United States of America and the western district of Texas and the El Paso division thereof, and, being first duly selected, tried, empanelled, and sworn and charged, upon their oaths in open court do present—

That on the 8th day of May, A. D. 1893, and in the county of —— and western district of Texas and within the jurisdiction of this court, one James H. Reagan did unlawfully, fraudulently, wilfully, and knowingly, and with intent to defraud the revenues of the United States, receive into his possession and conceal eight (8) head of cattle branded thus × — × on side and × on thigh, and marked or , of the value of eighty dollars, subject to duty, and which should have been invoiced; which said 8 head of cattle had then and there been unlawfully, wilfully, and knowingly, and
7 with intent to defraud the revenues of the United States, smuggled and clandestinely introduced into the United States of America from the Republic of Mexico by some person to the grand jury unknown, he, the said James H. Reagan, then and there well knowing that said 8 head of cattle had been smuggled, as aforesaid, contrary to the statute and against the peace and dignity of the United States of America.

NOYES RAND,
Foreman of the Grand Jury.

Endorsed: No. 794. Indictment. The United States *vs.* James H. Reagan. Smuggling. Government witnesses: Lee Cochran, C. O. Fisher, Fred. Smart, T. A. Cunningham. Filed Oct. 6th, 1893. D. H. Hart, clerk, by W. A. Gibbs, deputy.

The Order of Consolidation.

WEDNESDAY, *May 2nd*, 1894.

Court met, pursuant to adjournment, at 9 a. m., all officials thereof being present.

And thereupon the following proceedings were had and determined:

THE UNITED STATES
vs. } 791 A. April 24th, 1894.
JAMES H. REAGAN.

Upon motion of the district attorney, with the consent of defendant, it is ordered by the court that the order of court made and entered of record at the last term of the court consolidating causes 792, 793, and 794 *vs.* the same defendant be, and the same is, set aside, and, the defendant consenting as aforesaid, said causes numbered 792, 793, and 794 are hereby consolidated with cause 791 A, all against the same defendant, all of said causes to be tried together. (This order, made on April 24th, 1894, is now entered *nunc pro tunc.*

8 Ordered that court stand adjourned until tomorrow morning at nine o'clock.

Extract from His Honor Judge Maxey's Charge to the Jury.

"You should especially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit the temptation is strong to color, pervert, or withold the facts The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privelege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

The Judgment.

U. S. District Court Minutes, April Term, 1894, Monday, the 30th day of April, 1894.

THE UNITED STATES
vs. } 719 A. Consolidated.
JAMES H. REAGAN.

This cause coming on for trial heretofore, to wit, upon the 24th day of April, came the United States, by their district attorney, and the defendant, Jame H. Reagan, in person and by counsel, and both parties announsed ready for trial.

9 Thereupon came a jury of good and lawful men of the western district of Texas, who were duly elected, sworn, and empanelled; and the defendant being arraigned at the bar of the court and the indictments herein having been read to him, he enters his plea of not guilty to the offences therein alleged and charged; and the said jury having heard the evidence in the cause, the argument of counsel thereon, and having been charged as to the law applicable in the cause, on this the 30th day of April, A. D. 1894, retired in charge of the officer to consider of their verdict, and thereafter, on the same day, returned into open court the following verdict, to wit:

THE UNITED STATES }
vs.
JAMES H. REAGAN. }

We, the jury, find the defendant guilty as charged under indictment No. 791 A, and not guilty as charged under indictments Nos. 792, 793, and 794.

HORACE B. STEVENS, *Foreman.*

And the said jury having delivered said verdict, and the same having been read by the clerk, the defendant, through his counsel, requested that said jury be polled, and the name of each juror was then separately called, and each juror as his name was called was asked if said verdict was his verdict, each of said jurors answering in the affirmative; whereupon said verdict was received and entered.

It is therefore considered by the court that the defendant, James H. Reagan, is in accordance with said verdict guilty of the offense and crime of "unlawfully and with intent to defraud the revenues of the United States of America receiving into his possession and concealing forty head of horned cattle then and there subject to duty, which should have been invoiced; which said cattle had been unlawfully and wilfully and with intent to defraud the revenues as aforesaid smuggled and clandestinely introduced into the United States of America from the Republic of Mexico without paying or accounting for the duties thereon, he, the said James H. Reagan, knowing said cattle to have been smuggled as aforesaid," as charged and alleged in said indictment No. 791 A.

It is further considered that the defendant James H. Reagan, is not guilty of the crime and offense of unlawfully receiving
10 into his possession and concealing certain cattle described in the several indictments numbered 792, 793, and 794, which said cattle had been smuggled and clandestinely introduced into the United States of America from the Republic of Mexico, which said cattle were then and there subject to duty and which should have been invoiced, as required by law, he, the said James H. Reagan, well knowing said cattle to have been smuggled and clandestinely introduced into the United States without paying the customs duties due thereon, with intent to defraud the revenues of the United States, as alleged in said above-numbered indictments

numbered seven hundred and ninety-two and seven hundred and ninety-three and seven hundred and ninety-four, in accordance with the verdict of the jury; and it is therefore ordered, adjudged, and decreed that defendant, James H. Reagan, be discharged and go hence without day as to the charges alleged in said indictments as aforesaid, to wit, Nos. 792, 793, and 794.

And upon motion of defendant, through his counsel, the sentence of the court is suspended until some future day of the present term, the defendant being remanded to the custody of the marshal and to the county jail of El Paso county, Texas, to await said sentence.

Thereupon it was ordered that the court stand adjourned until tomorrow at 9 o'clock a. m.

Defendant's Motion for New Trial.

In the United States Court for the Western District of Texas, El Paso Division.

THE UNITED STATES
vs.
JAMES H. REAGAN. } No. 791 A.

To the Hon. T. S. Maxey, judge of said court:

Now comes James H. Reagan, defendant in the above styled and numbered cause, and prays and moves the court to set aside and hold for naught the verdict of the jury and judgment rendered thereon in said cause on the 30th day of April, A. D. 1894, and grant the defendant a new trial therein for the following reasons, to wit:

11 1st. Because upon the trial of the above-styled cause the defendant claimed the right to make ten challenges peremptorily, but notwithstanding said claim the court only permitted defendant to exercise three peremptory challenges upon the whole four cases; to which counsel for defendant then and there excepted and asked the court to allow a bill of exceptions to said ruling of the court, and that counsel be granted time to prepare said bill of exceptions; which said requests of counsel was then and there granted by the court, in which ruling of court defendant respectfully represents that the court erred and that said defendant should have been allowed ten challenges as claimed by him and as allowed by section 819, Revised Statutes, for said defendant did, after the ruling of the court aforesaid, exhaust the three challenges permitted by the court, and all this notwithstanding the defendant was then and there upon trial under four separate and distinct indictments which had theretofore been consolidated; that said defendant was injured by being thus restricted to three challenges in all four cases consolidated as aforesaid, and would have, had he been so permitted to do by the court, peremptorily challenged seven of the jurors, who he was compelled to accept and take upon the jury by reason of having been allowed three challenges only, which said three chal-

lenges were exhausted and used upon jurors equally objectionable to defendant as the seven above referred to; that a jury could have been easily obtained without delaying the court, but very little, if any, if defendant had been allowed the ten peremptory challenges as requested and claimed by him, for there was upon the list furnished defendant by the clerk the names of twenty-four jurors.

2nd. Because in your honor's charge to the jury the following language in the latter part thereof appears and was read to and in the hearing of the jury, to wit:

"The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privelege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

12 The defendant respectfully represents to the court that the above charge was prejudicial to the rights of the defendant and respectfully submits that the court erred in giving the same to the jury, because it in effect tells the jury that a privilege has been granted to the defendant, thereby indicating to the jury that it was not a right under the law. The court further in effect impresses the jury with the fact that said defendant is not worthy of belief, when in the section above referred to the following words are used, to wit: "The deep personal interest which he (meaning the defendant) may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit;" that defendant most respectfully submits that the above language, so used as aforesaid by your honor in said charge, was calculated to prejudice the jury against him and impress them with the idea that defendant was unworthy of belief.

3rd. That after the jury had been charged by the court and just before said jury left the court-room the court, in addition to the charge which was in writing, said to the jury verbally "that the Government" (meaning thereby the Government of the United States) "had been at great expense and the defendant at no little expense, and that therefore they ought to arrive at a verdict." Defendant respectfully submits that such verbal instruction to the jury was calculated to injure the rights of defendant and did so injure him in the minds of the jury, because they were by the same led to believe that the expense to the Government was the paramount consideration, and that the same must be stopped as soon as possible and the defendant punished for whatever expense had been incurred by the Government.

4th. Because the verdict of the jury is contrary to and against the law, and that the same is contrary to and against the evidence, and that there is no evidence whatever that any cattle were ever smuggled at all; that no evidence, direct or circumstantial, was ever during the trial introduced, produced, offered, or attempted to be offered by the prosecution or from any other source that any of

the cattle mentioned in the indictment upon which defend-
13 ant was convicted or any of the others upon which he was tried at the same time were ever smuggled or clandestinely introduced into the United States from Mexico or anywhere else.

5th. Because there was no evidence whatever, either direct or circumstantial, introduced upon the trial that defendant had any knowledge whatever that any of said cattle mentioned in this or any indictment were smuggled or clandestinely introduced into the United States from Mexico or anywhere else or that the same had ever been smuggled or clandestinely introduced.

6th. Because all the evidence, both direct and circumstantial, showed conclusively that the cattle referred to in the indictment upon which defendant was convicted and all the cattle referred to in the other indictments upon which defendant was tried, that if any one of all said cattle above mentioned came into the United States at all from Mexico, that the same drifted or strayed into the United States or came in of their own accord and without any human agency being connected therewith.

7th. Because the evidence clearly showed that the cattle referred to in the indictment were the property of the defendant, and that he owned said cattle and their increase from the year 1889 up to the time the same were seized upon the complaint of the prosecuting witnesses.

8th. Because the verdict of the jury was without any evidence to support or maintain it and against all the evidence in the case.

9th. Because the counsel who was employed to assist the district attorney in this cause, in making the closing argument for the Government in prosecution, denounced the defendant in violent and extremely vituperative language without any evidence to justify such denunciation, comparing him, said defendant, to the James boys, the Dalton gang, the Younger brothers, and others of like ilk who had committed like depredations to said Dalton gang or those above named and all of whom have been convicted for their crimes, as is commonly and notoriously known (except, perhaps, Frank James), when there was no evidence whatever to show that this defendant had ever been convicted of any crime whatever or that he was a criminal at all or ever had been; that such language was
14 well calculated to prejudice the jury against said defendant, and doubtless did prevent said jury from giving defendant a fair trial.

10th. Because the defendant has not been tried for the offense with which he is charged, but has been tried on the bad character given him in closing argument by said counsel who closed the argument for the prosecution and upon the improper construction given to certain papers, to wit, a mortgage given by the defendant to Newirth for benefit of Lindheim & Co., of Del Rio, Texas, and which had no relation to any cattle or other property in Mexico or outside of the State of Texas and to which said mortgage reference is hereby especially made; also a bill of sale to Ed. and Bladen Ramsey from defendant and a mortgage from said Ramseys to defendant to secure the payment of the money for the property men-

tioned in said bill of sale, and both bill of sale and mortgage bear date the same day, to wit, —; also a bill of sale made by defendant to Lee Reagan and introduced in evidence upon the trial by the prosecution; also two certificates of the record of marks and brands of defendant and offered in evidence by defendant upon the trial; that all of the said papers are hereby especially referred to and asked, respectively, to be made parts hereof, or that if that cannot be done that certified copies of them be made and attached hereto and marked, respectively, with exhibit marks so that they may be more easily identified; that none of said papers above referred to were in anywise connected with any property whatever outside of the State of Texas or that ever had been; that said papers were fully explained by witnesses of the highest character offered by the defendant; said witnesses were in nowise related to defendant; that without such explanation so made by said witnesses for defendant the said papers for themselves showed that they could not relate to any property in Mexico or that had been there, yet the said counsel who made the closing argument for the prosecution put such a construction upon said papers as was wholly unwarranted by the evidence or any part of it and was wholly contrary thereto.

Wherefore, the premises considered, defendant most respectfully prays your honor to set aside the verdict and judgment rendered in the said cause and grant the defendant a new trial herein and for such other relief as your honor may upon full consideration deem the defendant entitled to; and the defendant will ever pray, etc.

F. B. SEXTON AND
DEAN & DEWEES,
Att'ys for Defendant, James H. Reagan.

Endorsed: 791 A. In the U. S. district court for the western district of Texas, at El Paso. April term, 1894. The United States *vs.* James H. Reagan. Motion for new trial. Filed this 2nd day of May, 1894. D. H. Hart, clerk, by Warner A. Gibbs, deputy.

Judgment Overruling Motion for New Trial.

U. S. District Court Minutes, April Term, 1894, Thursday, the 3rd Day of May, 1894.

THE UNITED STATES } No. 791 A. Defendant's Motion
vs. for New Trial.
JAMES H. REAGAN. }

On this day came on to be heard the motion for a new trial filed in this cause heretofore, to wit, on the second day of May, A. D. 1894, the defendant, James H. Reagan, being present in person as well as represented by counsel, and the court, having heard said motion, as well as the argument of counsel thereon, and having carefully considered same, is of opinion that it ought to be refused.

Wherefore it is the order, judgment, and decree of the court that said motion for a new trial in this cause be, and the same is, in all things overruled and refused.

Order Giving Ten Days in which to Present and File Bill of Exceptions.

16 THE UNITED STATES
vs.
JAMES H. REAGAN. } No. 791 A.

It is the order of the court in the above-styled cause that the defendant be, and he is hereby, granted and allowed ten (10) days from and after this day, the 3rd day of May, 1894, within which to prepare and present bills of exceptions heretofore allowed herein and in which counsel were granted time to prepare same.

Sentence.

THE UNITED STATES
vs.
JAMES H. REAGAN. } 791 A.

And on this day came into open court James H. Reagan, the defendant in this cause, and being asked by the court if he had anything to urge or say why sentence should not now be pronounced against him in accordance with the verdict of the jury and the judgment entered of record in this cause on the 30th day of April, A. D. 1894, and he offering nothing in bar thereof—

It is the order, judgment, and decree of the court that the defendant, James H. Reagan, be imprisoned for the period of two (2) years from the date hereof in the Kings county penitentiary, in the city of Brooklyn and State of New York, for the crime and offense of having "unlawfully, fraudulently, wilfully, and knowingly and with intent to defraud the revenues of the United States of America received into his possession and concealed forty head of horned cattle * * * subject to duty and which should have been invoiced; which said cattle had then and there been unlawfully and with intent to defraud the United States revenues as aforesaid smuggled and clandestinely introduced into the United States from the Republic of Mexico * * * without paying or accounting for the customs duties, he, said James H. Reagan, well knowing said cattle to have been smuggled as aforesaid, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America, on the fourth day of
17 April, 1893, in the western district of Texas, as alleged and charged in the bill of indictment in accordance with the verdict of the jury.

It is further ordered that the marshal of this district, with all convenient dispatch, transport the said James H. Reagan to said Kings county penitentiary, in the city of Brooklyn, State of New

York, and there deliver him to the superintendent, warden, or other proper person in charge of said Kings county penitentiary, and that said superintendent, warden, or other person in charge of said penitentiary detain the said James H. Reagan for the period of two years from this date in accordance with this sentence, and that the clerk of this court immediately certify, under the seal of the court, and deliver to the said marshal a copy of the judgment and sentence in this cause to accompany the body of the said James H. Reagan, defendant, and a duplicate to be left therewith at the said Kings county penitentiary, in the city of Brooklyn and State of New York, the said copy to be warant and authority for the transportation and imprisonment of said J. H. Reagan as hereinbefore provided.

It is further ordered that the said James H. Reagan be temporarily committed to the county jail of Bexar county, in the city of San Antonio, Bexar county, Texas, until such time as said marshal can carry this sentence into full force and effect.

Assignment of Errors.

In the District Court of the United States for the Western District of Texas, at El Paso.

THE UNITED STATES *vs.* JAMES H. REAGAN. } No. 791 A, Consolidated with Nos. 792, 793, and 794.

And now comes the said defendant, James H. Reagan, and assigns the following errors in the rulings and action of the court in the proceedings of the court and during the trial of said cause:

18

1.

The court erred in refusing to allow to the defendant ten peremptory challenges to jurors and in allowing the said defendant only three peremptory challenges to jurors summoned to try the said defendant in the above-entitled cause.

2.

The court erred in giving the jury in said cause the following instructions, viz:

"You should specially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit the temptation is strong to color, pervert, or withhold the facts. The law permits the defendant at his own request to testify in his own behalf. The defendant here has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

Because such comments on the testimony of the defendant were well calculated to prejudice the jury and doubtless did prejudice the jury against the testimony of the said defendant and prevent the jury from giving him a fair and impartial trial.

3.

The court erred in overruling the defendant's motion for a new trial on the grounds set forth in said motion, all of which grounds are hereby incorporated into and made part of this assignment of error.

4.

The court erred in saying orally to the jury before the said jury left the court-room (and after having read to the jury his charge, which was in writing) in substance, "That the Government" (meaning thereby the Government of the United States) "had been at great expense and the defendant at no little expense, and that therefore they ought to arrive at a verdict" because such language
19 was calculated to injure the rights of the defendant, and the jury may thereby have been led to believe that the expense to the Government was a paramount consideration and that the same should be stopped as soon as possible and the defendant punished for whatever expense had been incurred by the Government. This assignment is based upon the third ground of defendant's motion for a new trial.

J. M. DEAN,
F. B. SEXTON,
Att'ys for Defendant, James H. Reagan.

Endorsed: No. 791 A, consolidated with Nos. 792, 793, and 794. The United States *vs.* James H. Reagan. Assignment of errors. Filed May 8th, 1894. D. H. Hart, clerk, by Warner A. Gibbs, deputy.

Bill of Exceptions No. 1.

In the District Court of the United States for the Western District of Texas, at El Paso.

THE UNITED STATES } No. 791 A, Consolidated with Nos. 792, 793,
vs. and 794.
JAMES H. REAGAN. }

Be it remembered that the above-entitled cause was called for trial on the 24th day of April, 1894, and after both parties had announced ready for trial and before the jury was empanelled and while the clerk of this court was preparing jury lists to hand to counsel on each side of the case, as required by law, one of the counsel for the defendant moved the court in open court to allow the defendant ten peremptory challenges, the United States attorney having stated that the defendant was indicted under art. 3082 of the Revised Statutes of the United States for receiving and con-

cealing cattle smuggled into the United States, the said defendant knowing said cattle to have been so smuggled into the United States, and the said counsel making said motion insisting that the offense with which the said defendant was charged was a
20 felony, and that under the provisions of art. 819 of the Revised Statutes of the United States the said defendant was, as a matter of right, entitled to ten peremptory challenges, and the court, after hearing argument on said motion on behalf of the said defendant, did overrule the said motion and judicially held that the said defendant was charged only with a misdemeanor and was entitled to only three peremptory challenges; by reason of which ruling of the said honorable court the said defendant was greatly injured in being required to accept seven jurors whom he desired to challenge and who were unfavorably disposed towards him and not impartial towards him, and the said defendant, in open court, excepted to the above-stated ruling of the court, and the court then took a note of said exception and gave the said defendant time to prepare his bill of exceptions to the said ruling of the court, and the said defendant now tenders to the said honorable court this his bill of exceptions to said ruling and prays that the same may be allowed and signed by the court *nunc pro tunc* and in accordance with the order of the court allowing the defendant ten days' time in which to make up, tender, and file his bills of exception in said case.

Signed this 11th May, 1894, for 3rd May, 1894.

T. S. MAXEY, *Judge.*

Approved May 11th, 1894.

R. U. CULBERSON,
District Attorney for the U. S.

Endorsed: No. 791 A, consolidated with 792, 793, and 794. The United States *vs.* James H. Reagan. Bill of exceptions No. 1. Filed May 12th, 1894. D. H. Hart, clerk.

Bill of Exceptions No. 3.

In the District Court of the United States for the Western District of Texas, at El Paso, April Term, 1894.

21 THE UNITED STATES *vs.* JAMES H. REAGAN. } No. 791 A, Consolidated with 792, 793, 794.

Be it remembered that on this the 3rd day of May, in open court, came on to be heard before the said court the motion of the defendant for a new trial in the above-entitled cause, and the same, having been duly argued by counsel for the defendant, was overruled by the court, and the said defendant was refused a new trial by the court; and thereupon the defendant in open court, by his counsel, excepted to the said ruling of the said court because the said defendant says that he was, as matter of law and right, entitled

to a new trial in said cause upon all the grounds set forth in said motion, which is hereby referred to and prayed to be taken and read as part hereof.

And the said defendant now here presents this his bill of exceptions to the said ruling of the court and prays that the same may be allowed now as and for said 3rd day of May, 1894, in accordance with the order of your honor's court made on said 3rd day of May, 1894, in open court, then in session and entered of record in said court, which said order grants and allows ten days from said 3rd May, 1894, to the defendant to make and tender his bills of exception in this case to the court.

Signed this 11th May, 1894, for the 3rd May, 1894.

T. S. MAXEY, *Judge.*

Approved May 11th, 1894.

R. U. CULBERSON,
District Attorney for the U. S.

Endorsed: No. 791 A, consolidated with 792, 793, and 794. The United States *vs.* James H. Reagan. Bill of exceptions No. 3. Filed May 12th. D. H. Hart, clerk.

Petition for Writ of Error.

In the District Court of the United States for the Western District of Texas, at El Paso.

22 JAMES H. REAGAN, Plaintiff in Error, *vs.* THE UNITED STATES, Defendant in Error. } No. 791 A, Consolidated with Nos. 792, 793, and 794.

To the Honorable T. S. Maxey, judge of said court:

James H. Reagan, the above-named plaintiff, considering himself aggrieved by the judgment entered in the above entitled and numbered cause on the 30th day of April, 1894, doth hereby petition your honor for a writ of error from said judgment (a copy of which is hereto attached) to the Supreme Court of the United States, in accordance with the provisions of the 5th section of "An act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3rd, 1891; and he prays that this writ of error be allowed, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. M. DEAN,
F. B. SEXTON,
Att'ys for James H. Reagan, Plaintiff in Error.

And the said James H. Reagan, plaintiff in error, as aforesaid, further prays your honor, if your honor allows the writ of error above prayed for, after the citation in error is served to admit him

to bail in such sum as your honor may deem sufficient and proper, in accordance with the second clause of rule 36 of the Supreme Court of the United States in such cases made and provided, and to grant a supersedeas to the sentence already pronounced against him in this case.

J. M. DEAN,
F. B. SEXTON,
Att'ys for James H. Reagan.

23 *Order.*

Upon consideration of the foregoing petition for a writ of error in the cause of the United States *vs.* James H. Rergan, and for bail and a supersedeas, it is now ordered that said petition for a writ of error be granted and that supersedeas and stay of proceedings be granted pending the writ of error in the Supreme Court. It is further ordered that said defendant, James Reagan, be admitted to bail pending the proceedings or writ of error in the Supreme Court upon his entering into bond conditioned, as required by law, with two or more good and sufficient sureties, to be approved by D. H. Hart, the clerk of this court, in the sum of six thousand ($6,000) dollars. It is further ordered that the clerk duly enter the foregoing petition and this order of record at the El Paso division of this court.

Ordered at Chambers, at San Antonio, this the 12th day of May, A. D. 1894.

T. S. MAXEY, *Judge.*

Endorsed: No. 791 A, consolidated with 792, 793, and 894. James H. Reagan, plaintiff in error, *vs.* The United States, defendant in error. Petition for writ of error. Filed May 12th, 1894. D. H. Hart, clerk.

Writ of Error.

UNITED STATES OF AMERICA:

The President of the United States to the honorable judge of the United States district court for the western district of Texas, at El Paso, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said U. S. district court, before you or some of you, between James H. Reagan, plaintiff in error, and the United States is defendant in error, a manifest error hath happened, to the great damage of the said James H.
24 Reagan, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings, aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme

Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 12th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

D. H. HART,
Clerk of the U. S. District Court for the Western District of Texas, at El Paso.

Allowed this 12th day of May, A. D. 1894.

T. S. MAXEY, *Judge.*

Endorsed: No. 791 A, consolidated with 792, 793 and 794. The United States *vs.* James H. Reagan. Writ of error. Filed May 12th, 1894. D. H. Hart, clerk.

Citation in Error.

UNITED STATES OF AMERICA:

To the United States, represented by Robert U. Culberson, Esq., U. S. district att'y of the western district of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the U. S. district court of the western district
25 of Texas, at El Paso, wherein James H. Reagan is plaintiff in error and the United States are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

T. S. MAXEY, *Judge.*

D. H. HART, *Clerk.*

MAY 12TH, 1894.

I hereby acknowledge service of the within and foregoing citation for and on behalf of the United States.

R. U. CULBERSON,
Att'y for the U. S. for the Western District of Texas.

Endorsed: No. 791 A, consolidated with 792, 793, and 794. The United States *vs.* James H. Reagan. Citation in error. Filed May 12th, 1894. D. H. Hart, clerk.

26 In the United States District Court for the Western District of Texas, El Paso Division.

THE UNITED STATES }
vs.
JAMES H. REAGAN. }

Be it remembered that upon the trial of the above-styled case the following facts were introduced in evidence:

T. A. CUNNINGHAM, witness for the Government, testified as follows:

In the year 1893 I was holding the position of deputy collector of customs for the Saluria district, stationed at Langtry, Texas. The Saluria district extends from the coast up on the Rio Grande, including Eagle Pass, Del Rio, Langtry, and on up into the neighborhood of Pulvo, about sixteen or eighteen miles below Presidio. The place I was assigned to for duty was between Devil's river and Pulvo. I know the defendant in this case. On the 4th day of April, 1893, I siezed forty head of cattle from the defendant, James Reagan. There were nineteen head of four-year-old steers; fourteen cows, ranging all the way from three to four years old; five three-year-old steers—some of them might have been verging into four years old, and some of them into three. The classification was correct, because they were classed by good stockmen, and I have got a knowledge of animals myself. Then there was a little brown calf following an X bar X cow, and there was a little red and white spotted calf which was branded S O S on the side. They were branded X bar X; X bar on the side and X on the thigh, except the S O S calf, and all marked under half crop in the left ear except two head and leaving out the S O S calf. I took possession of them on the 2nd of April, 1893, but did not report the seizure until the 4th. The facts of the siezure are that I received information that Mexican cattle of the X bar X brand had been crossed into the United States. The next day, I believe it was, after I received that information, Mr. Reagan, the defendant, was in the corral, shoeing his horse. I asked him where his herd of cattle was and he told me, and I asked him if he had cattle in the brand X bar X. I
27 don't think I said anything about the mark, and he said yes. I told him I had information of cattle of that brand and that I would have to go out there and look at them and possibly siize them, and he said they were his—that it was his own mark and brand. The defendant and I went on out to the herd. I am not certain but what he met some one and turned back, but I don't think he did. I went on out to the herd and found the cattle that I had received information concerning and stopped the herd. I then telegraphed down to Del Rio to Ben. Borum to come up, and Mr. Borum came up that night. I don't remember whether I telegraphed for Ben. Borum or McCormick. I think I telegraphed for McCormick, but Ben. Borum came, and also Tom Farley. The next morning we cut out forty head of the X bar X cattle from the de-

fendant's herd. The defendant and Lon Tatum had the herd together. Mr. Reagan, the defendant, was present when they were cut out. I seized the cattle and appointed appraisers to appraise them and advertise them. Reagan, the defendant, filed a $250, and the forty head of cattle were turned over to the marshal. They remained in the marshal's hands until there was an order of court to release them. I received an order that they could cross the river, and they were crossed into Mexico, and I returned a receipt to the custom-house. The description I have given is correct as to the number and brand. They were all, except the calf and two others, marked under half crop in each ear; one of them looked very much like an underslope, and there was another one that showed that the tip of the ear was cut off—it was very slight, though—which would make it a crop and under half crop; the crop was very little; a tick might have take it off; it was very little.

I did make a seizure on the 3rd day of May, 1893. We gathered those cattle on diverse days; still the designation of the seizure was on the 3rd of May, and there were twelve head in that seizure; there were steers, two burnt cows, and two or three yearlings. These twelve head were branded X bar X. The parties who claimed them in Mexico came over and made affi-
28 davit to them, and the cattle were returned to Mexico after they were appraised and advertised; but they were not returned solely; there were other seizures that went with them. I think there was another seizure about the 10th or 11th of May, 1893, of about fifteen head, and then there was another seizure of eight or nine head. The cattle that was seized on the 10th or 11th of May were brought up by Dock Anderson and Choate. I made the seizure, and we both signed the seizure report—that is, myself and Dock Anderson. These were all branded X bar X, and some of them were marked crop and some of them under half crop. Then there was another seizure about the 15th of May, 1893. I don't know whether it was just on the 15th, but it was just about that time. I don't particularly remember the number of cattle in that seizure, but I remember the seizure of eight, nine, or ten head somewheres in the neighborhood of the 15th of May. All the cattle in these seizures mentioned were returned or taken to Mexico. Among the last seizures some of the cattle—seven, eight, or nine head—were marked with a crop in the left ear. I was present at all the seizures but one—the one that Anderson and Choate rounded up. The first seizure was made within about a mile and a half or two miles of Langtry, and the next seizure was made about twenty miles from Langtry, up on the Pecos, and the next one was gathered about fourteen or fifteen miles from Langtry. The one you mentioned of twelve head was gathered up above. I can't tell where they gathered them; they brought them to Langtry. Only the first seizure—the forty head—were found in the possession of any one; they were found in the possession of Reagan and others. The seizures after that were found on the range. I don't know how far off from Langtry this seizure that Anderson rounded up was found, but the furthest one off that I gathered was about twenty-two or

twenty-three miles. I saw all the stock. I made all the seizures but the one referred to, and that was the one that Anderson rounded up and we both signed the seizure papers. There
29 were between seventy and eighty head seized in all that are included in these four indictments. I had been located there at Langtry as deputy collector, etc., since two years ago last August. I was both on the field and in the office, part of the time in the office and part of the time out; I stayed in the office very little. Before I made this seizure of the forty head I had never seen any cattle around there branded X bar X, with a crop off the left ear, except one, and that reverted to my mind after the seizure was made; it was a little red steer right there at Langtry; I recognized him as the one I had seen after I had made the seizure. Langtry is situated right on the Rio Grande, and the first seizure was made about a mile and a half or two miles from Langtry, and the other seizures were all the way from twelve to twenty-three or twenty-four miles from the river. I was acquainted with the defendant, Mr. Reagan, at that time. He had a pasture below Langtry; part of it was bounded by the Rio Grande and part of it was the railroad wire; only at the bridges he had put wire along there and put a pasture fence there; it ran up near Langtry and ran down near Shuman, a distance of about eleven miles. The Rio Grande was the south boundary, and then right out from it was the railroad and the bridges that he fenced up with wire. That pasture was built about six or eight months, and maybe a year, before these seizures. There were stock in that pasture at the time I made the first seizure, because I know the next day I rode down by there and saw some in the fence. I didn't see the stock in there that were seized; they were not in that pasture when I made the seizure; they were going in a northerly direction. Frank Reagan, Jim Reagan, and Lon Tatum were driving the cattle, and I think Zeno —— was there. The morning I concluded to capture the cattle they were found out on the road. As soon as I saw the cattle I seized them. These forty head had no other brand than X bar X. The marks as I have given them are correct. I have been in Texas twenty-eight or thirty years. I have familiarity with the
30 appearance of animals at certain ages. I have owned cattle, sometimes two or three thousand head at a time. Langtry is in Val Verde county, Texas.

On cross-examination witness said:

Mr. Reagan was shoeing a horse when I first spoke to him on the subject. I expect it was his own horse. He is not a blacksmith, but the cowmen nearly all shoe their own horses. I told him the brand I wanted and asked him if he had any; and he said yes, and that they were his. He afterwards filed his claim bond for them. He told me promptly that he had them, but he didn't know how many. I had not seen the defendant with the cattle the day before or any time before. I saw him off and on nearly every day. I had not seen him with cattle in that brand the day before nor several days before. There were some cattle down there about a half or

three-quarters of a mile from Langtry, but I don't know whether they were his or not, and don't know whether he was with them or not. I don't know whether this was the same bunch or not, because I was not near to them. I do not know, of my own knowledge, who was driving that herd. I had never seen these previously. When I went out to seize them was the first I knew of the defendant having that herd. He said that mark and brand was his. I didn't have any trouble in making the seizure that day, but there was a little bad feeling when I was cutting them out. He didn't oppose my taking them. He filed his claim for them as authorized by the custom laws. I can't tell how many days I had been in Langtry before this first seizure was made. I was there off and on, sometimes two or three days at a time, and then I might be gone a week. I was around there, though, two or three days before that, because we were talking about them gathering cattle. I didn't talk to Mr. Reagan about his gathering cattle, but with Dock Anderson, and it was a common remark there that they were gathering cattle for the market. When I say "they" I include
Mr. Reagan, the defendant. I heard him talking about
31 gathering cattle for the market. I did not see these
cattle in the rock pen within a short distance of the custom-house before I seized them. I did not know that they were penned there. If I ever saw them there my memory don't serve me of it. I do not know where the cattle were penned the night before the seizure. I did not see them turned out of that rock pen the evening before the seizure. I do not know where Jim Reagan, the defendant, was camped. I didn't go down to the camp, and don't remember seeing it at all. What I saw of this transaction was in open daylight. I don't know as to when and how long the defendant and his associates were engaged in gathering these cattle. I heard that they were gathering cattle, but I didn't see them gathering them. There is a railroad running right through the town of Langtry. There are different ways of getting cattle to market in that region; some of them are shipped on the railroad and others are driven off; most of the cattle are driven off on the road. I suppose they generally drive them in daylight. I don't know whether there was any concealment by Mr. Reagan in this transaction or not. I found the cattle when I went for them, and he told me that that mark and brand was his.

On redirect examination witness said:

In the whole herd from which I cut these forty head I think there was about three or four hundred head. I know Mr. Borum and he is here attending court. He helped me to cut them out on the second day; the first day I could not get anybody to help me cut them out. Tom Farley came up from Del Rio with Mr. Borum. I think he was off somewhere at the time of the cutting. I saw him just before I commenced to cut the cattle. Tom Farley was not an officer at that time.

On recross-examination witness said:

I think there were three or four hundred head in the herd. I am just guessing at it. I think there was about that many; there might not have been near three hundred.

The statement and bond of J. H. Reagan claiming the cattle introduced in evidence.

32 BEN. A. BORUM, witness for the Government, testified as follows:

My name is Ben. Borum, and about April, 1893, I was living at Del Rio, Texas. I have been living there about eight years. I have been over in Mexico, and have had a ranch there since 1884. My ranch is a cattle ranch. Rutledge and Pettis were in partnership with me when I established a ranch over there in June, 1884. Hughes & McCormick, G. W. Simmons & Co., the Rose Brothers, and the old man Rose had cattle over there. I use a mark and brand over in Mexico. I know the brands that Simmons & Co. use over there. When I first went there they used just the straight X bar on the left side and under half crop in one ear; then afterwards, I don't know just exactly what time, they started X on the left thigh; then their brand was X bar on the side and X on the thigh, and their mark was under half crop in the left ear. It would be very hard to tell how many cattle Simmons & Co. had on the other side of the river in 1892 and 1893; they ought to have had four or five thousand head—that is, they were supposed to have something near that; might have had more or less. Simmons & Co.'s ranch is out ten or fifteen miles from the Rio Grande; their range did not come up to the river. I had a range on the river right from them for three or four years after I first went there up to 1886 or 1887. I turned that range over to the owners, and left it and went up above on the Rio Grande with McCormick. I never run G. W. Simmons & Company's ranch, but Mr. Cockran, their manager, went off once for about a month, and I told him that I would see to it; he put hands with me, and in working our stock we worked theirs. I never noticed any change in the mark of the ears of Simmons & Company's cattle on the other side in the X bar X brand. At the time these forty head of cattle were captured up at Langtry I was at home in Del Rio. I got a telegram from Mr. Cunningham that he had made a seizure there, and notified me to come up and look at the cattle, and I went up to Langtry. I think I arrived at Langtry about
33 five o'clock in the evening of the 3rd of April. I did not look at the cattle that evening, but did the next morning. I found them out about half a mile or a mile from Langtry. I saw the cattle in bulk that night. They were in a bluff pen that night and I could not tell one animal from another, but I looked at them the next morning. At the cutting out the next morning there were present Mr. Cunningham, Mr. Jim Reagan, Mr. Billings, Lon Tatum, Tom Farley, and Mr. Emerick, I think, was there; if he was not there when we first commenced cutting he got there while

we were cutting. There were one or two others, but I don't recollect who it was. I guess I done most of the actual cutting. I cut out X bar X cattle from two year old up with the under half crop mark. The reason I cut out the forty head was because Mr. Cunningham said he had seized them. Mr. Reagan was present and heard the agreement. I was cutting them for the custom-house officer; they were seized cattle. I think I cut out forty head. I knew some of the cattle. The cattle that I cut out were branded X bar on the ribs X on the thigh. I had been acquainted with that brand and mark about five or six years. It was G. W. Simmons & Company's brand. I had branded calves in that brand. That was the brand of G. W. Simmons & Co. and the under half crop in the left ear was their mark. I knew two or three head of those seized cattle independent of the mark and brand. There was one white steer with a brown-dun head, I reckon you would call it. I had previously seen that steer in Mexico; I don't know how often I had seen him, but I had seen him several times there on the range. He was of a little off color, a white steer with a brown or dun head; you hardly ever see one of the same color; then there was a brown steer in the bunch which I had know about the same length of time, I guess, and there was one red cow with white specks on her flanks; I recognized her; I had previously seen her in Mexico. The white steer with the brown head I took to be four or five years old, and the other brown steer about the same age. The cow that I recognized was
34 about four, I guess, maybe not over three. I think I saw them in Mexico along about November, 1892—the latter part of October or in November. I was a cattleman and don't think I could be mistaken about these cattle. I had seen them out from the river on the other side about ten or fifteen miles. When I last saw these three that I identified they were, you might say, on the Simmons range. He had changed ranches and we had made a round-up and was moving the cattle back further our towards the mountains, and these cattle were in the round-up. After the cattle were cut out there at Langtry I staid there that evening and went back to Del Rio the next morning. I saw these forty head of cattle afterwards when I was up there at Langtry to help cross them across the river. I don't know whether all the forty head were there or not. McCormick was there, I think, and they were turned over to Simmons & Company's men to cross back to the other side of the river. Reagan, the defendant, was present when the cutting out was done and claimed the cattle. He never said anything to me about how he became possessed of the cattle. There must have been four or five hundred head in the herd that these forty head were cut from. I cut out steers and cows and one or two yearlings. The steers were three or four years old, and maybe some five. The cows were what we call grown cows—from three and four year-olds up. I did not examine the marks and brands of any of that bunch of cattle to see whether any change had been made. There was another capture of cattle up there about the latter part of April or the first of May, 1893, and I was called up there again and found they had quite a bunch of cattle there. The river guards and customs

officers had them there at Langtry. In this second bunch there were some X-bar cattle in the bunch, but I don't recollect how many. I looked at the cattle in that bunch. There were a few head, I am not certain how many, that showed to have a crop off of one ear. I looked at their ears. I didn't throw them down to examine them. I saw the mark and it was old work.
35 I didn't examine the brands of the X bars up there on the second trip. McCormick sent for me to come up to Langtry that trip. I didn't make a third trip. I think I was there only twice. In the second bunch there was one or two—I think it was two—cows that had the straight X bar without the X on the thigh. They were old cows. They were eight or nine years old. That was the brand that Simmons & Co. first used on the other side of the river. Those two cows were marked with the under-half crop in one ear. I had never seen those two cows on the other side of the river, that I know of. I didn't know them by their flesh marks. Each one of the cows had a calf with them with X bar X on the calf and a crop off of one ear. The calves were six or eight months old; eight months old, I guess. The calves were branded X bar X, with a crop in one ear. That is not Simmons' mark. Simmons' mark is simply an under half crop.

On cross-examination witness said:

I live in Del Rio, Texas, and have lived there seven or eight, and maybe nine, years. I think it was in September, 1885, that I moved there. I lived at Goliad before I moved to Del Rio. I lived in Goliad county about twenty years. I was raised in Texas. I have ranched in Mexico. I never was manager for G. W. Simmons & Co., only for about a month. Mr. Cockran went off to Kentucky and he left what he had there in my charge. I think it was in October, 1892. I think he went there in October and I think he got back along in November. I have owned a ranch in Mexico since 1884. It was originally located on the Rio Grande river, but afterwards I moved up and put my cattle with McCormick. McCormick's range was upon the Rio Grande above Las Vacas. I reckon it was thirty or forty miles from the Simmons range at that time. At the time I was temporary manager for Simmons & Co. I was in with them. We were interested together in the lease of the pasture we have now. I still have an interest and have cattle in that pasture. I was living in Del Rio on the 3d of April, 1893. I was at Langtry on the 4th of April, 1893. I
36 went there on the 3rd of April, I think it was the evening of the 3rd. I went because I received a telegram from Mr. Cunningham. I have not got that telegram. I got there in the evening about five or six o'clock, near sundown; very little while before dark. I never saw the cattle until that night, but they were all in a bunch. The cattle were in what you might call a pen—a rough canon place they have fenced off to guard them in. The pen has rough rock banks all around, and only one place for them to come out, and they guarded that place to keep them from coming out. There might have been some little fencing. I was only at the

front part of it. That enclosure was about a half a mile from the United States custom-house. I saw Mr. Reagan that evening. I believe I had a conversation with him about these cattle. He did not say they were his that I know of. I guess it was about nine o'clock when I saw him the next morning. After we got breakfast we went down to the herd. Four or five of us went down to the herd. Mr. Cunningham, myself, and I believe Jim Reagan went out and Lon Tatum and Mr. Billings. I had a conversation with Reagan about the cattle that morning. We rode around and looked at the herd. He claimed the cattle. I don't know that he said they were his. I think he filed a claim bond for them, but I do not know it. The seizure, the cutting out, and all that occurred in open daylight. I do not know who brought these cattle into the United States. I never saw anybody bring them; never heard anybody say they had brought them. I think that was a tolerably dry time. I can't tell you what is the ordinary, average depth of the Rio Grande. I have lived on it for the last eight or ten years, but not at Langtry; at Del Rio it is passable at several places; it seems to be larger down there than it is here, but it — passable frequently about Del Rio. Del Rio is below Langtry. I slept at that rock pen that night. I went down there that night with Mr. Cunningham. After passing Langtry going down the Rio Grande the Pecos river comes into the Rio Grande, and then the Devil's river empties
37 into the Rio Grande before you get down as far as Del Rio; those are the only two streams that I know of that amount to anything. There are no streams coming in on the Mexican side along there that has any water in them. Langtry is above Pecos river and the Devil's river. I don't know about the smaller streams above, as I have never been down on this side only on the train, and there is no stream on the other side that has any water in them only in a freshet or something of that kind. I don't have much idea how many head of stock I own over in Mexico. I reckon, though, about two thousand head. I had known the defendant in this case before I met him at the time of these seizures. I reckon I have known him ever since I have been in Del Rio. I don't know just when I did first get acquainted with him. I am perfectly sure that I moved to Del Rio as early as 1885. I think I landed in Del Rio on the 11th of September, 1885.

C. O. Fisher, witness for the Government, testified as follows:

My name is C. O. Fisher and I live at Pedras Fegras, Old Mexico. I did come over to Del Rio, Texas, about May 14, 1893. I left the ranch on the eleventh and came over to Del Rio and came up to Langtry about the 17th. I heard that some of our cattle from our side of the river had been captured by a customs officer and heard that some of them were mine, and I went up there to see if any of them were mine. When I got to Langtry they had cattle in two pens, about sixty head of Mexican cattle. The next morning after I got there they put them altogether. The customs officers said there were three seizures then altogether. I looked at all the cattle

pretty well. I looked through them first and saw there was none of mine, and I looked and saw other cattle there that I knew was Mexican cattle. Some of the cattle we caught them and examined the brands. Some of the brands were burnt out. We examined those. Some had the ear-marks altered and we examined those. I found none of mine, but found other Mexican cattle. I went there for the purpose of examining the stock for my own cattle.

38 The defendant, J. H. Reagan, came in the next day after we got there. There were several different brands of cattle there. Some had flying diamond, several S L O, and some X bars, and some with X bar X, and some had three T's on them. G. W. Simmons & Co. give the X bar X brand in Mexico. The firm of G. W. Simmons & Co. is composed of Geo. Simmons and his brother, Sam. Simmons. I know them. Geo. Simmons lives in Kentucky. Sam. Simmons is in Eagle Pass at present. He is consular agent there on the Pedras Negras side, and he is a member of the legislature of Texas. I helped to brand the cattle in the Simmons brand in Mexico in 1883. That was when they commenced the brand. They used then X bar on the side and no other. The first and only ear-mark they ever did use was the under half crop in the left ear. I was with Simmons & Co. from 1883 until 1889. I took charge and control of the outfit. I think it was in the fall of 1884. Mr. Thompson was the chief man before me. He was one of the partners at first. He sold out to Sam. Simmons and he got disgusted with the country and went back to Kentucky, and when he left he turned the outfit over to me. I remained there until 1889, when I turned the outfit over to Sam. Hodge. After that I just looked after my own cattle. I moved off to one side and looked after my own cattle. I established a ranch about twenty-five miles away from Simmons. After I went out to myself I had about a thousand head of my own cattle. At the time I left Simmons & Co. they were supposed to have about five thousand head of cattle. We changed the mode of branding calves before I quit Simmons' outfit. We made an addition to the brand and commenced X on the thigh in 1887. Some of them branded the calves a little too small to suit me, and I thought it was a little better to have a little more, so I made the thigh brand. The ear-mark was never changed. Since I have been to myself I have known the stock up till now. The Simmons cattle at that time ran on the river—part of them down on the river, in front of it—and they drifted over from the river. The bulk of the cattle were on the San Diego. Simmons & Co. have never changed their ranch more than five or six miles. The old ranch and the new one are five or six miles apart. I found cattle there at Langtry

39 on the 14th of March, 1893, in the X bar brand. I don't know exactly how many there were. There were four head that I recognized in that old brand. They were all marked under half crop in the left ear. There were several head there in the X bar X brand; but there was about four head that I recognized well in that brand. They had the under half crop. They threw down a few of the cattle in the pen and examined them; but these cattle

that I speak of were not thrown down. There were five head that had had the ear-mark changed, and as well as I recollect they all had X bar X on them. The change was that they made a crop out of the under half crop—made a complete crop out of it. That change had been made some time; still you could see that it was fresh. The upper part of the ear was red and the lower part was black. It was not cropped off smooth. There was a little set-off. I had seen the defendant before that time. I saw the defendant's brand on record there in Del Rio. I saw that he had the brand X bar X and the mark crop off the left ear on record in Del Rio. The way the mark and the brand was recorded there was no difference between it and the Simmons brand and mark, only in the mark. Simmons & Company's mark was under half crop and this was a whole crop in the left ear. That brand was on record in Del Rio in April, 1890—that is, with the crop off the left ear. The next year it was on the record again, but it was under half crop in the left ear—changed the mark. These ears that had been changed, I think at first it was under half crop, and it was plain enough to see that the ears were changed; anybody who see cattle could tell that the cattle had been worked on. When a man would see one part red and the other black, and it was left sticking out half inch long, he would say that the ear had been worked on right straight. I knew about six or eight head of those cattle by their flesh-marks, outside of their marks and brands—about four head in the old brand and four head in the new brand—and an old scalawag steer. I called them Simmons cattle as soon as I saw them. On May 14th, there at Langtry, I identified eight head and an old scalawag steer. I had seen those cattle on the other side of the river. I expect I was the principal one who had put that brand on originally on the other side of the river—me and the hands over there. I knew the cattle. There was one red or brown cow there with just the old brand on her, X bar on the side, and the under half crop. She was seven or eight years old, and she had a young calf following her with X bar X on it and the left ear cropped off. Then there was a black-sided lined-backed cow with old ear-mark and brand. Then there was a black and white, kind of a speckly, cow. She was in the old brand and ear-mark. Then there was a red and a white spotted heifer about three years old, X bar X and under half crop in the left ear. Then there was a brindle steer, kind of a rough brindle steer, about three years old past or four yea-s old. Then there was a red steer with staglish looks; he also had X bar X on him. Then there was a high-horned brown steer. I think he must have been about five years old. That old scalawag brown steer, he had the X bar burnt out and turned into a seven dash. After it was burnt it was a seven and a slash to one side of it. There was also another cow in there that I could not swear to positively, but she had nothing but X bar X on her, and had a calf following her with this same ear-mark and brand, crop in the left ear and X bar X on the thigh. The lined-back cow with X bar on the side and under half crop in the ear, her calf had a crop off the left ear. At the time I was making this examination up there at Langtry the

two McCormicks, Dave McCormick and Ed. McCormick, Mr. Dan. Franks, Johnny Townsend, Lee Cochran, and the customs officers, Mr. Cunningham and Dock Anderson, and some rangers were there. Roy Bean and all those, a good many people, were there. Everybody was talking and looking at the cattle and seemed to be a little excited. The rangers were there before I came there. I had never seen the rangers before. Johnny Townsend was there at that time; he was working for Simmons. *The*

There are two Townsends, Johnny Townsend and his father;
41 it was the young man who was there. He was working for
Simmons, under Lee Cochran, at that time. I never had him as a hand; I don't recollect just when he came over there; he has been there two or three years. (After pointing out on the map (Exhibit A) several relative points, witness continues:) Simmons & Co. made a purchase of cattle when I first went there; in late years they have not bought any cattle. My own brand that I use over there is X L, with a bar below it. In the cattle business we work through the cattle all the time as a general thing over there on some hunt or other; we have what is called general round-ups in the fall and spring; then we round up in the summer, too, and we go on outside hunts and gather cattle, too. That is the way it used to be before they begun to fence. This line-back cow that I mentioned had the old ear-mark and brand on her; she was seven or eight years old. These eight or nine head of cattle that I recognized independent of marks and brands I have seen on the other side of the river; I had control of them; I was not mistaken in the cattle. We branded them there on the range; I branded that old cow myself, put the brand on with my own hand. It was the red or brown cow, with dark around her eyes, that had a calf; she was regular Spanish stock. I knew her; her calf had X bar X with a crop off the left. I am not positive that I branded that cow in Mexico, but I knew the cow was branded by the outfit and branded over there. That scalawag steer was probably eight years old; he came from the other side of the river. I don't think any of these cattle that I recognized there had been off the range a year. I think I saw them the summer before or on the fall round-up. That round-up would be from September to November. In the round-ups there are different owners taking part. There was a round-up in the fall of 1892; I was in that round-up and saw some of these cattle in the fall round-up and some in the summer. I had no difficulty in recognizing them; I didn't look at the cattle very long; I was so well satisfied that I went out of the pen. As well

as I recollect there were five or six head that I noticed
42 their ears had been worked on; had been cut off. The mark
had been changed from an under half crop to a crop—that is, the cattle that were in the pen at the time I was there. They had other cattle that I didn't see. Mr. Reagan came to the pen the next day, and was arrested, I think, that day. I went from Langtry to Del Rio and from there to the ranch. I didn't see the cattle taken home. I have not seen them on the range since they have been back over there (points out on the map where the round-

up was that he had been speaking about). That old cow would have to be transferred seventy-five or eighty miles in order to get over to Langtry here. That old cow ranged there on the head of the Rio San Diego and on the Touli. She never leaves the place. In May, 1893, I found her over here at Langtry, in the pen there. I didn't talk to Mr. Reagan much there at Langtry. I didn't know him. I heard others talk to him. The fact is, I don't think we spoke any words at all only in off-hand way. I found no cattle there belonging to me. They had a cow and a calf of mine, but Mr. Choate said they lost it. I afterwards got the cow and calf from this side of the river. I did not get them myself, because I didn't hunt over there. I had other parties looking out for me. They delivered the cow on the other side of the river. Simmons & Co. delivered the cow to me. They worked my cattle just the same as they did their own. They worked my cattle and I worked theirs. I had never sold these cattle for Simmons & Co. We never sell cattle unless to be shipped from Mexico to some market, and we sell them in Mexico. We don't sell them to be turned loose on the range. Mr. Lee Cochran is running the Simmons ranch now. I saw that X bar X brand on record in Val Verde county at this time that I was over there. It was put on record in April, 1890—X bar X and a crop off the left ear. In 1892 it was on record again with under half crop in the left ear and the same brand. On cross-examination witness said it was Saturday, May 14th, when I went to Langtry, and we staid there over Sunday. As well as I
43 can recollect I found about sixty head of cattle in charge of the customs officers. The officers told me that the cattle had been previously seized by them. The cattle were in Roy Bean's pen. It was a rock pen. The cattle were in possession of the customs officers. I don't know whether the defendant ever had any of those cattles in possession. The cattle were branded X bar and X bar X. I was examined before the U. S. commissioner on the 23rd of May, 1893. I said in that examination that there were only twenty-five head of X bar cattle there. I did say there were twenty or twenty-five head of cattle in charge of the customs officers. They told me there were three seizures. I didn't see any of the seizures made. The brands on those twenty-five head of cattle were X bar and X bar X, and there were other brands on them too. I did say in that examination that those twenty-five head of cattle there were branded X bar X. That is the brand given by G. W. Simmons & Co. in Mexico. I know it is because I commenced the brand and have been working it there; we had it recorded. I have put that brand on myself. We had it recorded at Jimenez, in Old Mexico. That is the same brand that I saw on record in Val Verde county, and I so stated in that examination before the U. S. commissioner. I knew it was the same because I examined the record and saw it there. I examined the records of Val Verde county on this trip that I went over to see these cattle. The date of the record was, first, April, 1890, and after that it was April, 1892. I don't recollect just what time in 1892. I just seen the change, and that is all I know. The ear-marks that I saw on the

cattle at Langtry were under half crop and also crop off the left ear. Simmons & Co. give the under half crop in Mexico. I could tell that the mark ha- been altered on those cattle by looking at them. It was not necessary to throw them down. I was about ten feet away from them. They were so poor they could hardly stand up. They were in a weak and bad condition. They were not hard to get close
44 to. I could see that the upper part of the ear was fresher than the other and it was not smooth. I have marked many a calf, but I never altered marks unless I had the right to. Sometimes a man buys a little bunch of cattle and, with the permission of the owner, he changes the ear-marks. I have ear-marked cattle in all sorts of manners, because they have all sorts of ear-marks. In ma-king calves in the under-half crop I never make it a swallow fork by accident. Sometimes in marking cattle the knife will slip, but if I make it a swallow fork I could easily change it to an under-half crop. I recognized nine head of those cattle, with the scalawag steer, but there were eight head that I knew well. In the examination before the commissioner I said there were nine head that I recognized with the scalawag steer. He was not claimed by anybody. The old brown cow had X bar on the side and the mark was under-half crop, and she had a calf with her branded X bar on the side and X on the thigh and the calf had the left ear cropped off. I don't think I said anything about the ear-mark of the calf in the examination before the commissioner; I don't think I did; I am not certain. When I said the old ear-mark and brand I meant the old cow; but the calf, I don't think I mentioned the ear-mark of that to Mr. Gildea (the commissioner). We were speaking of the old cow, and the ear-mark of the calf was not mentioned there before the commissioner, in effect (counsel reads from the testimony): "that the calf was branded X bar on the side and X on the thigh, as we now give it, and also our above ear-mark, both brand and mark which is given by the defendant in Val Verde county, Texas."

He didn't get it down the way I said it. The old cow had the ear-mark and brand. I didn't make the statement exactly as written down there. In reference to the ear-mark and brand I meant the old cow. I saw that testimony. I saw that record of my deposition when I was here at the other term of court. I do not know who made those pencil marks in there. There was a question came up, and that is the reason why it was made. I said that calf business there was wrong. I don't recollect
45 who made the pencil marks. I made the remark that that part of it was wrong, and sombody remarked that it had better be changed. I signed that down at Del Rio when I was examined down there. The deposition were read over to me rather fast, and I didn't notice. I don't recollect how it was. It was read over to me and I signed it at the time it was read over to me. I didn't direct any correction to be made then; I overlooked that. Mr. Gildea made those interlineations in ink. I didn't call his attention to this which I now allege to be a mistake. He wrote that out and read it over to me and I would say whether it was correct or not.

I corrected him two or three times; that is why that is written there above. I live in Mexico; don't live in Texas at all. I live on and control and own the cañon Los Arbolles ranch, in Mexico. I used to work for Simmons & Co. At the time I was at Langtry Mr. Cunningham, Dock Anderson, and another party, who were in the customs service, were there, and I think there were four rangers and the two McCormicks and Dan. Franks. Dock Anderson was a river guard. I suppose Dock is a nickname. The defendant came here the next day after we got there in the evening. The majority of the people who were there were people that belonged there and people who had gone there to see those cattle. I don't know of any particular reason for calling the rangers there. Some said there was talk of trouble. I do not know of any reason for calling the rangers there. I didn't suggest their being brought there, and nothing about it. Fred. Smart was there; he was in the employ of Simmons. I am not working for Simmons & Co. as a hand, but we help one another. I am not interested in his ranch any more than as a friend. We help one another; that is all. I have been in the cattle business in Mexico since 1883. I own about a thousand head of cattle. My ranch is about twenty-five miles from Simmons' ranch—a half-day's ride. The black-sided lined-backed cow, I had seen her on the San Diego and at Langtry—not San Diego on the Pacific coast, but a little creek over in the state of Coahuila,
46 Mexico. That cow was about seven or eight years old. I have known her ever since she was a *claf*. That is the cow that ran on the San Diego and the Touli. I never saw her out of the range before. Her brand was X bar. I branded that cow when she was a *claf*. I don't recollect the year. She was about a six-months-old calf when I branded her. In 1889 there were no fences over in that country and cattle ran about the country as they pleased. They ranged in the country they were located in; they didn't get all over the country. I did say in that deposition that the range of Simmons & Co. was all over the country. I mean by that that old cow had all the country she wanted, but she never left the country. I saw that brown lined-backed cow over in Mexico in the summer or fall round-up in 1892. I don't recollect the color of her eyes. I don't recollect exactly what the color of her nose is; as a general rule a cow has a black nose. In that deposition I said the brown line-backed cow was seven or eight years old, if I recollect right. I don't recollect exactly now what I did say then. I didn't say that the brown or red cow—Spanish stock—had black eyes and nose; Mr. Gilden might have wrote it that way and I didn't notice it. She was about seven years old. That red stagish-looking steer is not the scalawag steer. The red stagish-looking steer was about three years old past. I saw him during the summer or fall of 1892 over there in the San Diego country; there is where he ran all the time on the San Diego. He was marked under half crop and branded X bar X. The brown high-horned steer was about a five-years-old steer at that time. I saw him in Mexico the summer before. The brindle steer was a little younger—probably a year younger. In

that deposition I said he was three or four. I don't know which he has got it. He was a little bony and rough. He was branded X bar X. That little scrubby, speckled, humpy cow I last saw her in Mexico in the fall round-up of 1892. That cow was about eight years old. I didn't examine the cattle enough to give positively the ages. I know those cattle were seven or eight
47 years old, guessing at them. That cow was branded X bar on the side with under half crop in the left year. That red and white spotted heifer was a little inclined to be a little good blood, a little gradey. That brown scalawag steer was an old steer, about eight years old I reckon. There were about four with the X bar and four with the X bar X, besides the old brown scalawag steer; his brand was burnt out. I could see the brand was altered and different from what it used to be. I went close enough to inspect the brand. (Witness makes on a piece of paper the brand as it appeared, as follows: ×7—. I helped to brand these cattle when they first commenced the brand, when they bought the stock. I am not certain, but I think I branded the day they commenced. I do not know anything of my own knowledge as to show these cattle came over to this side of the river; I did not drive them over and never saw anybody drive them over. Simmons and Company ranch is about twenty or twenty-five miles from the Rio Grande on a direct line. In the fall of 1892 and the spring of 1893 they had commenced to build fences. Our cattle were below the fences. The fencing was between us and the Rio Grande. Our cattle had free access to the Rio Grande before the fences were put up. In the years 1885, '6, '7, '8, '9 there was nothing to hinder the cattle from going where they pleased. They commenced to fence in 1891. I think McCormick built a fence there in 1891, if I am not mistaken. I have never crossed the river at Langtry. I went to Langtry that time to see the cattle, and I came by there last fall coming up to court, and I came by there this time. It has a railroad station and a post office. I don't know that it is a port of entry to the United States, but I think it is. I never crossed anything there. I don't know.

Redirect examination, witness said:

I was a witness in this case at the last October term of
48 court. I was a witness before the grand jury. At the last term of court I read over the testimony that I gave at Del Rio. I don't recollect whose handwriting that word "mistake" is in. I recollect that I spoke up and said it was, something was, wrong, and some one said something about making a minute of it. I found that mistake about that calf here at the last term of court. That referred to the cow and not the calf. I was not certain about the brand on that big brown steer; that was the only one I was not certain about the brand. I told the commissioner I thought it had the X on the thigh, and I don't recollect whether he put it in or not. I never made any minutes.

49 JAMES BORUM, witness for the Government, testified as follows:

My name is James Borum, and I make my home in Del Rio. B. A. Borum is my father; he is here. I don't remember what I was doing about the last of April or the first of May, 1893. I was on the other side of the river part of the while and on this side. I was working with the cattle on the other side of the river for my father. I have worked a good deal with cattle on the other side of the river. I have been over there and backwards and forwards for the last five or six years; I have been over there nearly all the time the last two or three years. My father ranches over there. G. W. Simmons & Co. have a ranch over there, and McCormick & Hughes, G. W. Simmons & Co., and my father have a pasture together. McCormick & Hughes and the Rose Brothers have ranches over there. I believe I was in Del Rio in April and May of last year, and I came up to where a seizure was made. I don't remember exactly the date. I came up after my father did. I saw some cattle up there at Langtry in the hands of the customs officers. I looked at the cattle. It was in April some time; I don't remember exactly the date. I found one large white steer with brown head head that I knew; it belonged to G. W. Simmons & Co. and was about five years old. He was branded X bar X. There were other cattle there, but I didn't recognize them. I had not known this steer a great while on the other side, but I had seen him for a long time. He ranged over there about the head of the Las Vacas creek. The Simmons range is about ten miles, I suppose, right square out from the river. Del Rio is the nearest point, I suppose. That one animal was the only animal I recognized independent of mark and brand.

On cross-examination witness said:

I was working in Mexico for my father. He was ranching with Simmons & Co. The one steer that I recognized was branded X bar on the side and X on the thigh. I think I would have known him independent of his brand; I think I would have known him if I had seen him on the right-hand side; he was a very noted
50 steer. I know of my own knowledge that he was in Mexico and he had Simmons & Company's brand on him. I don't know anything about the ownership of the steer, only the brand, and I had seen him over there. I don't know of my own knowledge that he belonged to Simmons & Co., but he was there with their brand on him. I don't know how he got on this side of the river. When I saw him he was in the possession of the customs officers. I have been engaged in the stock business ever since I have been large enough to run cattle. I have not worked cattle on this side of the river very much. I have a little bit; not enough to amount to anything. I was over here once on a hunt, I believe. I was over here with Mr. Dewees. I believe I was engaged in rounding up cattle and taking them back from this side. I assisted in getting hold of them and taking them back to the other side of

the river. It would be hard to tell where Mr. Dewees' range was, but the pasture where we were working was below Devil's river. I suppose it is about opposite the range, on the other side of the river—that is, about opposite where the Simmons range was. I don't know that I have seen cattle voluntarily crossing the Rio Grande. I don't know it as a fact that they have done it, because I have never seen them crossing. I have seen Texas cattle over there in Mexico; some few around the border there. I could not tell you how many miles the Simmons range extended in the fall of 1892 and the spring of 1893. I haven't any idea how many miles. Cattle drift off of their range certain times of the year. The cattle on the Simmons range could have gotten to the Rio Grande by coming away around up towards the mountains and coming around up here (indicating on the map). That was a very roundabout way. The cattle do sometimes drift in roundabout ways in spite of all the cowboys can do. They would have had a long, dry trip to have gotten up to the river around this way. We find the cattle of that range a good ways off from headquarters sometimes—I guess, as much as thirty-five miles. In some instances we find them as far off as fifty miles. Sometimes they do get off as far as fifty miles.

51 Redirect examination, witness testified as follows:

Mr. Dewees was not with me at all. I went off by myself. I don't remember how many I crossed back. There was something like fifteen or eighteen; something along that way. There were two or three of my father's, and there were others of Lorenzo's and some of Mr. McCormick's, and I believe there was one deuce of heart.

I didn't find any X bars at all. There was one brought up from down below. It was found there at all. I don't remember what date that was; it was last year. There were none of them in the scissors brand. I took only the cattle that belonged in Mexico. I believe there was one or two of Jim Rose's cattle that I took back, too. I took those cattle back across at what is known as the Protestanto crossing, five or six miles above Del Rio. I believe it is in Mr. Dewees' range. When I speak of Mr. Dewees' range I mean on this side, right above Del Rio. I know that you can cross right from his pasture. The Protestanto crossing is right next to his pasture. He has no range on the other side of the river that I know of.

52 LEE COCHRAN, witness for the Government, testified as follows:

My name is Lee Cochran. I had charge of Simmons & Company's ranch in Mexico last year. I took control of that ranch in December, 1889. Mr. C. O. Fisher preceded me. I have been in control of that ranch from that time to this. I have been away once or twice, about a month at a time. When I went away I left Sam Hodge in control; there was other men on the ranch, but he was running the stock and bossed all the men when I was away. I know Mr. Fisher. I know Mr. Borum. Mr. Borum is now ranch-

ing with Simmons & Co. We lost some cattle from that range in the winter of 1892 and 1893. I don't know how many we lost, but I know we lost some; we missed them on the range when we went to work. Simmons & Co. were supposed to have about six or seven thousand head—supposed to be about that many; I can't tell our loss. I was called to this side of the river in April, 1893, to see about our cattle; I don't remember the exact date, but it was somewhere about the first of April. The reason I came over I was sent for to come over. I came over to Del Rio I think about the 4th or 5th of April and went to Langtry the next day and found some cattle there. I got to Del Rio in the afternoon and the train left about four o'clock. I don't remember whether I left that day or the following day; about the 5th or 6th of April, 1893. I went up to Langtry and found forty head of cattle in the Simmons brand in the possession of the U. S. inspector, T. A. Cunningham. They were Simmons cattle; some of them I recognized. They were branded X bar on the side and X on the thigh, and marked under half crop in the left ear. That brand and mark belonged to Simmons & Co., in Mexico. They all had the X bar on them and also X on the side. When I went on the Simmons ranch they were using the X bar X. All the old cattle had X bar on them; some of them were Mexican, old stock, which they bought when they
53 went there; they all had X bar on the side. I don't know only from hearsay as to when the cattle commenced to bear X bar X. Yearlings and two and two and a half year olds had X bar X on them when I went there. I knew about twenty head of the cattle I found on this side of the river independent of the marks and brands. I got to Langtry that time in the evening about sundown and staid there all the next day and the next morning left for Del Rio. I came back to Langtry again afterwards; I don't remember what time, but a few days after that I went back there. I went back to see if I could not find more of our cattle. There were two or three seizures made after that forty head. I saw some other seized cattle some time in April; about the 20th of April; I don't remember the date. We went to work there and found some other cattle. The next seizure after the forty head was about eight or ten head that I helped to gather myself. They were X bar X cattle. I helped to capture them and two or three of the rangers were there, and I had two or three men employed, and the inspectors were out there helping to gather them. They were seized by Deputy Collector Cunninghim. We gather them in Reagan's pasture and some of them outside and took them to Langtry. We gathered six or seven head in Reagan's pasture. In the pasture we gathered three-year-olds and up; some four and five year olds. One or two head that we roped we found that the ear-marks had been changed. We roped a two-year-old steer that we found in the pasture and it showed plainly that the under half crop had been cut off. We only found six or seven head in Reagan's pasture. We found two or three outside, amounting to eight or ten, I think. That was in May, I think; I don't remember the exact date of the seizure. I knew two or three of those cattle personally. They were Simmons & Company's cattle;

I recognized them by their flesh-marks. I last saw them in Mexico four or five months before that; one of them I am sure I saw four or five months before that; one cow in the bunch I am satisfied.

54 I had seen over on the ranch four or five or not over six months before that. She was what I would call a red cow with a kind of a brown neck and head. We did not get that one out of Reagan's pasture. We got her on the outside; out on the Pecos. The pasture was between the Rio Grande and the railroad. The fence was down, and we went outside and found three head outside. It was a wire fence, and had been broken or cut. Mr. Kirchner and Dick Chasten were two rangers that were with us. The defendant was down there in the pasture part of the day. He rode down there with us along the river in the middle of the day. He came down there where we were and saw Cunningham take the cattle. I heard Mr. Cunningham ask him if he claimed the cattle and he said, "I have the brand recorded and claim the cattle." I suppose the cattle were worth six or seven dollars per head around and the steers, I suppose, ten or twelve dollars. G. W. Simmons is the president of the firm of G. W. Simmons & Co. His brother is a partner and they have a ranch in Mexico, and the firm is known as G. W. Simmons & Co. S. M. Simmons lives in Eagle Pass, Texas. The first and second seizures of forty head and eight or ten head respectively were taken back into Mexico on the ranch, and they were there when I left. I had never disposed of those cattle I found on this side; had never sold them to any one. I was in control of the ranch. There were none of those cattle on this side by virtue of permission from me. The pasture that we were in, which I was told was the Reagan pasture, was a small pasture; I think about ten miles in length, and it is four or five miles between the railroad and the river. The railroad is fenced, and that makes the pasture, of course. The pasture is what the railroad cuts off from the Rio Grande. There is no grass in there at all; it is pretty dry. I have traveled along that railroad from the lower part of where he claims his pasture up to this side; it is eight or ten or twelve miles. In some places, I suppose, it is two or three miles wide and some places four miles, I suppose. You know the river make bends. In some places it is not more than a half a mile from the river to the railroad.

55 I judge it to be two or three miles from the mouth of the Pecos up to the lower end of his pasture; then from there up to Langtry is what was called his pasture, between the river and the railroad.

On cross-examination witness testified:

At Langtry I don't suppose the railroad is more than a quarter of a mile to the river. I suppose the pasture extends eight or ten miles down the river, and generally three or four miles in width. I think it is a small pasture. It would be called a small pasture out here in this western country. I don't know for certain how far it is from where the railroad crosses the Pecos down to the mouth. I don't know of my own knowledge and never heard any one say.

There is a new road there now. The old road was right close to the river. The same road was there at that time. When I went to Langtry the cattle were there in a rock corral. I think the whole forty head belonged to Simmons & Co. I recognized those twenty head by their flesh-marks, in connection with the brand. I recognized them by their flesh-marks and different make, and every other way, in connection with the brand and mark; that assists a man some. Some of that twenty head I had seen about two months before that on the ranch in Mexico. I said in my direct examination that we missed a good many cattle. I don't know of my own knowledge how they got away from us. There was a great fatality among cattle in some sections over there in the fall of 1892. We were not affected as much as in some other places, but we were affected by it. Simmons & Company's range runs over a big section of county. At that time there was some pastures. They ran over a big section of country. I suppose the range would be sixty miles in a north and south direction, and east and west I suppose it is thirty or forty miles, maybe fifty, in width. The Simmons cattle had access to the Rio Grande in some places up to the time this claim was made. In the fall of 1892 and the spring of 1893 the cattle in our ranch—some of them—lived on grass—the beef cattle and steer cattle. Those that were in particularly good condition were able to get out where there was plenty of good grass,
56 fifteen or twenty miles from the ranch. Cows that were poor had to subsist upon the brush and what little dry grass they could get. No; it is not a fact that most of the cattle in that country in the fall of 1892 and spring of 1893 lived on lachecerro—not entirely that alone, because there was some grass. I could not say to what extent they lived on lachecerro. There was a great scarcity of grass in all the pastures on both sides of the river. It was very difficult for the cattle to live. I am getting to be a stockman; I am learning something about the business. I have been engaged in the business since 1889. It is a fact that cattle drift some, in spite of all that can be done by the cowboys. The furthest that we have ever found any of our cattle away from where the house on the ranch is located is sixty or seventy miles from home. The time I went to Langtry and found those cattle in the possession of the customs officers Mr. Cunningham was there and Jim Reagan, the defendant, was there, and three or four other men that I didn't know at the time, and there was three or four men with me from the ranch—from our ranch. Mr. Reagan lived there at Langtry. The first time I went to Langtry I did not hear Mr. Reagan say anything about the cattle. I know what Mr. Reagan's (defendant-) brand and mark is; at that time it was X bar on the side and X on the thigh, and the mark was under half crop in the left ear. It was the same brand and mark that we had in Mexico. I knew that his brand and mark were recorded down there in Val Verde county; I have seen the record. The brand we have now is recorded in Texas, but the brand we had then is not recorded in Texas by us. In Mexico it is recorded at Jimenez. In 1893 I worked on two or three parts of the range on this side of the river, and the range was

controlled by two or three different parties. I didn't work with any ranchman, but I worked on the range. I worked out
57 from Langtry, on the Pecos there. In 1890 and 1891 I worked near Langtry, over in Mexico, on the other side of the river, but not on this side. I did not say in my examination on the last trial that I worked on this side. I worked in Mexico, opposite Langtry, in 1890 and 1891. We did not find any cattle at that time opposite Langtry belonging to our ranch, but ten or twelve miles further down I found two or three head. That was in 1890, the first year I worked. In 1891 we found some below Langtry on the creek. I didn't work in there in 1893. There was other work there, but I was not there myself. I do not know of my own knowledge when the X bar X brand was put on record first in Mexico. I don't know the exact date. I have seen the record, too. It has been there ten or eleven years, I think. That was before I went there. The X bar X and under half crop was put on record on this side in June, 1892. I believe it was in June, 1891, that I sent one of our men to have our brand and mark put on record in Mexico. We put our X bar X on record in June, 1891. I sent one of our men to have it done because they could talk good Spanish and I could not at that time. When I testified on the former trial of this case I did not say that I put it on record myself, but I said I had it done. I saw a notice, which was read to me, notifying all stockmen who had made any change in their mark or brand and the change was not recorded in a certain length of time we would be fined. I was the one that managed the matter of having the brand and mark put on record, but I didn't say that I went to Jimenez and done it myself. I could not say that my second trip to Langtry was about the 12th of May. I might say I don't know about the date, but I know I went back there in a few days after I went up there to see those forty head. I testified at the examination trial. I know I testified before the commissioner there, but I don't remember that date. I guess that was about the time. Those cattle were in the possession of the customs officer, Mr. Cunningham. I think there were eight head at that time.
58 They had had ten or twelve, but some of them got away at night, some gort away in the daytime in herd, but there was eight or ten head when we got to the pen with them. These eight head were branded X bar X. I recognized two or three head of those independent of their mark and brand. Those cattle were all the way from three years old up to six and seven years old. I guess I said in my examination before the commissioner that there were two calves in the bunch. I remember there were two calves in the bunch. I said what is written down there in that deposition. That one cow six or seven years old. Reagan didn't claim her; he said he didn't claim those that didn't have X on the thigh. I recognized three of the eight independent of mark and brand. That old cow I know I saw in Mexico. I suppose she was six or seven years old; she had X bar on the side but had no X on the thigh with under half crop. I don't think she was seized, and I understood that Regan didn't claim her. I didn't hear him say that he claimed

her. That cow, some would call her red. I would call her a red cow with a kind of a brown neck and head. She did not have a calf with her. I don't remember whether she was the one that had a calf or not. I don't remember whether I said in that examination down there that she had a calf or not. (Counsel reads from the deposition.) The cow was branded X bar; the calf was unbranded. I stated while ago that she had no calf, but I might be mistaken about that. She was a poor Mexican cow, and I recognized her by her horns; she had been in a stampede or broke the pen, and had one horn sloping off and gotched down and the other one straight up. I recognized another red and white spotted cow and another steer. I also recognized the cow by her build and make and peculiar shape of her horns; she was what is called a crumply-horned cow. I judged her to be four or five years old. Her brand was X bar on the side and X on the thigh. I had seen this cow previous to that time in Mexico, over there on Simmons range. There was a creek
59 over there we call the Touli. That was five or six miles from the ranch. I remember I had seen her over there. That red steer was a big, high, raw-boned steer, three and a half or four years old at that time. I am satisfied I had seen him in Mexico. The other five I did -ot recognize, except in connection with the brand. I do not know how these cattle got over the river into Texas. I didn't see anybody bring them over. Of my own knowledge I do not know of anybody having brought them over. S. M. Simmons now is in Kentucky, I suppose. I don't know exactly where he is. He owns a two-thirds interest in the ranch; but his brother is the president. His brother's name is George Simmons. He lives in Kentucky. Mr. George Simmons was on the ranch not long ago, a couple of months ago. Sam. Simmons has not been there himself since February, 1890. Sam. Simmons is the one that lives at Eagle Pass. I don't know exactly where George Simmons was on the ranch before the last time; but it was three or four yea-s before I was there—about 1886 or 1887. Mr. Sam. Simmons was a member of the last Texas legislature. I did not make affidavit of the ownership of these cattle. I claimed them for Simmons & Co. as agent. Mr. Sam. Simmons made affidavit to the ownership of San Antonio, I think. I don't know that, only he told me so. Mr. Simmons had not been on the ranch since 1890, and was not familiar with the cattle on the ranch. I don't think he would know a single cow, calf, or steer on the ranch by flesh-marks. In taking the cattle back from this side into Mexico, it is possible that some might have been in the bunch that didn't belong to us. There might have been one or two that didn't belong to us, but not X bar X cattle; they belonged to the Simmons ranch. We had a certain age that we cut from, of course. Some of these cattle I didn't recognize by their flesh-marks, but we had reason to believe that they were ours. Some we didn't recognize as being ours by the flesh-marks, and only by the brand. It is possible that we made a mistake in taking back some of that sort. I made an affidavit against this defendant there
60 at Langtry three or four times. I made the affidavits before the justice of the peace there at Langtry—Roy Bean. We

cut out everything in the X bar X from three-year-olds up, and if there was any that looked like they had been monkeyed with—that is, the ear-marks changed—we cut them too, and then we took back some yearlings because they had X bar X on them and the ear-mark was a crop, and they were following X bar cows with the under half crop. The cows had no X on the thigh. That is the reason why we took back the yearlings. We didn't take everything in the X bar. We left some X bar cattle there on the range. We gave him the benefit of the doubt. That was our instructions. I never did take back any yearlings, seven in number, five of which were not following cows at all. I was not there when these cattle were crossed, but they were not in the bunch that we had seized there. When they got back to the Rio Grande there were no yearlings of that kind in the bunch. I was not there when they crossed back to the other side of the river, but I had a couple of men there, and Mr. McCormick was there and the customs officers, Mr. Cunningham and Dock Anderson. Mr. Ned McCormick was there and Mr. Townsend. I know the defendant in this case. I have no prejudice or hard feelings against him. We speak, but we have no particular communication. We are not intimate. I cannot say that I am hostile towards him.

On redirect examination witness testified:

North or northwest our cattle could not get out any further than the mountains. I suppose these mountains (referring to the map) are about forty-five or fifty miles from the river, and when there is a good season—good rains—they can come out to these mountains. I found that Reagan had a brand on this side in 1890. I didn't take any cattle back that he could possibly have put in that brand in 1890.

61 D. R. McCORMICK, witness for the Government, testified as follows:

My name is D. R. McCormick, and I live at Del Rio, Texas. I am in the business of raising cattle. I have been engaged in that business twenty-one years. My ranch property is situated in Mexico. I have had a ranch in Mexico thirteen years this coming August. My ranch fronts on the Rio Grande, beginning right opposite the mouth of the Pecos, about a quarter of a mile below, and extends down the river in Mexico within a few miles of Devil's river; between Langtry and Del Rio on the opposite side of the river. I have a good idea of the lay of the country over in Mexico; I have rode over it a great deal. I am familiar with the location of the Simmons ranch. I assisted in making that map, and it is accurate and correct. (Witness explains the relative points on the map.) I don't recollect when the first fences were built, but I think the first fence was built about six or seven years ago. G. W. Simmons & Co. went in this fenced pasture last year; before that they were down in here on the Touli and Rio San Diego. The Trivinio fence was built in 1892. The fence that runs out from the Rodriguez survey was not built until June, 1893. I remember of the seizure

of certain cattle being made at Langtry by the customs officers of the Government along in the spring of 1893. At the time I heard of the seizure I was at the Independent ranch upon the Pecos about seventy-five miles. Afterwards I went down to the place where the seizure had been made. I went through Langtry back from Fort Stockton; then I came back, I think it was about the 15th of May, 1893. I found some of my cattle there. Deputy Collector Cunningham and the river guards had possession of the cattle. I examined the cattle; Mr. Cunningham requested me to take down the ear-marks and brands. There were cattle in two different pens. There were cattle there in the X bar X brand; in one corral I think they had forty head, and in the other corral I am not really sure just how many they had, but they had a good many
62 in there also. There were different seizures, as I understood Capt. Cunningham, which was the reason he didn't have them together. I am familiar with the X bar X brand; I have known it since 1882. It is G. W. Simmons & Company's brand. These cattle had different marks; some of them were under half crop in the left ear and others crop in the left ear. In examination we found that the marks had been changed. At the time I examined the cattle I took a memorandum showing the mark of each of the cattle, the brands and description. Capt. Cunningham told me to take a list of them and I done so, and in hunting up my papers I find that I have only a portion of the list—of the original—but Capt. Cunningham has a straight copy of it also. We examined it there, and Sheriff Jones, of Val Verde county, also examined it. We also examined them the day we crossed them over. The county inspector there also has a list. Our lists compare. (Witness produces a portion of the original list.) I made this list at the time. I didn't know when I went out to the corral that he was going to request me to copy them, and I had that little piece of paper and made the list. I cannot call just the number of X bar X cattle we found there; I think in both bunches there were in the neighborhood of seventy something. I wish to state that there was one seizure that was at Langtry and crossed over that I never saw. I was down at the city of Mexico and didn't see it. There was only one animal there that I recognized in the bar X bar brand, and it is not in this case at all. I recognized one steer, independent of the mark and brand, as belonging to Simmons & Co. I had seen that steer over in Mexico, at the head of the Las Vacas creek. I had seen it in the fall before—I suppose, maybe, in October. He was a brown steer with long horns, and I suppose he was eight or nine years old. He was branded X bar, and his marks was changed when I found him. To the best of my recollection I knew him on the other side of the river as X bar, with under half crop in the left ear.
63 Those X bar and X bar X cattle that I saw there in the pen at Langtry, I noticed their marks particularly; we roped some of them. The ear-marks of those I examined had been changed from an under half crop to a crop; I recollect three of them; that was done by cutting off the ear, and instead of cutting it off straight

with the under half crop two or three of them had left a portion of the ear so that there was a little notch there; it was not cut straight.

(Here the defendant's counsel objected, and the objection was overruled and exception taken.)

The appearance of the ears was that they had been altered; that the upper half crop was made since the lower; I suppose they were careless and didn't make connection, and the upper portion showed to be fresher than the under portion. We found, also, calves with the crop in the left ear following under half crop cows with X bar without the X, which was formerly Simmons' brand. The cows were four or five years old. Simmons' first brand was just X bar on the side. He run that maybe four years, and then in addition to that, as the country got settled up and more people in there, he added the X on the thigh. These two old cows were in the first brand. The calves were branded X bar X; X bar on the side and X on the thigh and with full straight crop in the left ear. I could not say exactly the date that Simmons & Co. changed their brand over in Mexico; I think they ran the old one maybe four or five years and then changed. I think they went into that country in 1882, and they ran that brand, I suppose, until about 1887, or something like that. Among these seized cattle there was an S O S calf that was following an X bar X cow that was a young cow with straight X bar X brand and under half crop. I never worked on this side of t-e river to speak of; I have seen that S O S brand on record in Del Rio; I think it belongs to the defendant's wife, or did at first; it might have been transferred since then; that is the way it is on record there.

On cross-examination witness said:

64 I suppose there must have been one hundred and thirty head of cattle at Langtry in the hands of the customs officers when I went there on the 15th of May. I don't just recollect how many I found there in the X bar X brand; I think there was in the neighborhood of about seventy in both pens; I think there was forty in one pen. I didn't see any of the cattle seized myself. If I recollect right, the forty head were in the rock pen. I didn't know any of the forty head by flesh-marks, independent of mark and brand. I only infer that they belonged to Simmons & Co. by the brand on them. The defendant there has the X bar X brand on record at Del Rio, Texas, in Val Verde county. I do not know of my own knowledge how these cattle got into the United States. I did not see anybody bring them in; didn't hear anybody admit that they brought them in. I met a great many persons there at Langtry on the 15th of May; Capt. Cunningham, Dock Anderson, Sheriff Jones, Mr. Dewees, and the defendant was there also, I think. I think Mr. Choate was there; my brother and Fred. Smart; also Dan. Franks and Deputy Inspector Montell. There might have been several others there. I was there two or three times; Fisher was there, I think, and Lee Cochran, and two or three of the rangers; Kirchner and two or three other rangers were

there. Of the people who were there those in the employ of the United States Government were one river guard and one deputy collector and two deputy marshal*s*, I think. It was a question as to whether I was in the service of the U. S. Government at that time; Mr. Fricke was just out, and I don't know whether I was or not. I did hold a commission under him. The case I was examined in before the commissioner was down at Del Rio; there is no commissioner at Langtry. I am not real certain as to the date when I testified before Commissioner Gildea. We went from Langtry right down to Del Rio. I said it was about the 15th of May; it may have been a day or two before or after that I went to Langtry. I gave testimony in this case before the commissioner; I don't know whether I was in them all or not; I was in some of them. I had not been in partnership or interested with Simmons & Co., but I had known their brand since they started in 1882.

65 I was up at Langtry in company with Patricio Garcia at one time. I assisted in driving the cattle to the river when they were crossed back into Mexico, and my brother received them on the other side. At that time the river there at Langtry was swimming. I could not say what its general depth was. I had not been there for several years. That was in May, and August is the month it usually rises. The river was up some at that time. It was muddy. I have crossed lots of cattle across the Rio Grande. Opposite my ranch you can find good fords so that the water won't strike the body. I wish to state that I have not crossed any cattle since the McKinley bill took effect. The duty was to- high. At the time we crossed the cattle back into Mexico I am sure that the river was swimming; it swam our horses. I state that the river was up; it makes no difference what others state. Those cattle swam over and our horses swam over. Our men put their clothes and saddles in a skiff and took them over. I was there and am positive. I think Patricio Guerro was on the other side of the river at that time. He was not representing Simmons & Co.; he was representing another man there. He helped to receive the cattle with my brother. There are two different dates, you see, from the time that we crossed the cattle and the time we were at Langtry. I think it was about the 27th of May that we crossed the cattle. Patricio Guerro was at Langtry when we examined the cattle, and then he was on the other side of the river to help my brother take these cattle. We have got some of our cattle over from Texas down below there. I never got any of them from above the Rio Pecos, but lower down where the fords are better. I could not say how many acres we have in our pasture. We have got about thirty miles of Rio Grande front, and in some places it is about eight miles and others twelve miles from the river to these fences (pointing on the map). These strings of fence, one is twenty-one miles and the other is nineteen miles. Before we made an inclosure the extent of our range was from Del Rio up to the mouth of the Pecos.

66 Before the enclosure- were made over there the cattle mixed up considerable and scattered over the country a great deal more than after the pasture- were enclosed. Before the enclosures

were made the Simmons cattle ran from the Rio San Antonio up to the Rio Grande. That is, I suppose, about sixty miles; that is the extreme of where the cattle would run. There were some few scattering cattle. That drift fence was not completed until November, 1892. The cattle could go around that corner cut next to the mountains; there have been cattle to go around there. My home is in Del Rio, Texas, but my interests are mainly in Mexico. I have been acquainted with the proprietors of the Simmons ranch since they went there—in 1882, I think it was. I never was in their employment, but we worked together on general round-ups. I have known the defendant in this case—I suppose I saw him when I first come to Del Rio in 1880; I never was very familiar with him, just a speaking acquaintance. I have been assisting the officers of the Government in this prosecution; I have assisted the counsel in every way I could; I have assisted in the association. I belong to an association on this side of the river which is organized for the purpose of protecting our stock; we are taxed at a certain amount to join the association. At the last term of court I did not employ Major Teel, but our association employed him. I contributed my *pro rata*. The association has employed Judge Evans at this term of the court. My partner, Mr. Hughes, is not a witness here, but he is in town. He was here at the other term of court, but didn't testify.

67 PATRICIO GUERRO, witness for the Government, testified:

My name is Patricio Guerro, and I live at Jimenez, Mexico, in the State of Coahuila, Mexico. I have no ranch interests over there now. I did have an interest, but sold out in 1892. I had my range on the San Diego river. I had cattle. I know G. W. Simmons & Company's range over there. I have been acquainted with the Simmons range ever since they came there and put up a ranch. I am not real certain of the year they came, but I think it was 1883 or 1882. I was generally along in the general round-ups. I know the G. W. Simmons & Co. stock. I worked with their stock nearly every year outside of the general round-ups; they told me when they were going to make other round-ups, and I went with them. I did cross the river to this side and take some cattle back across the river last spring. I don't recollect for certain the date, but it was during the month of May. In the first trip we took seventy-five or seventy-six head. When I came on the first trip a companion of mine and I joined Mr. McCormick. The cattle we took over had different brands. I saw two animals among those cattle that I knew outside of the brands, but I knew a good many of them, because among them was some of my own. We took home some of G. W. Simmons & Company's cattle, but I am not certain how many head. I knew two of the Simmons cattle outside of the mark and brands. One was a red line-back beef; one a brown cow, with white on flanks. I knew that beef steer in Mexico from the time it was two or three years old. I knew it from that time on; at nearly every round-up I would see him. He was marked under

half crop, and was branded X bar and X on the thigh. The cow had the X bar only. The cow was marked under half crop. I had known those two cattle on Simmons' range before I came over here to take them back about four years. At the time we took them back into Mexico the steer was six or seven years old. The cow was about eight or nine years old. With the help of the
68 brand I knew others of the Simmons cattle. In making these stock back to Mexico we crossed the Rio Grande in front of Langtry. The river was not very deep; we crossed very easily.

On cross-examination witness testified:

I do not know how these cattle got across the Rio Grende into the United States. When these cattle were taken across to Mexico the customs guards and some other men were present; that was in May, 1893.

JOHN DOAK, witness for the Government, testified as follows:

My name is John Doak, and I live at Dryden, Texas; I have lived there seven years and a half. I am working stock, cattle, and horses. I am and have been in charge of the ranch of the Pecos Land & Cattle Co.; that is a good sized ranch, their stock range from where the ranch is to the mouth of the Pecos; not exactly to the mouth now. There has been a pasture put in about seven miles above the mouth; they go down that far. I first became acquainted with that country a little over seven years ago. I went there and worked as a hand until May, 1890, and since that I have had charge of the outfit. Prior to 1890 I hunted the range every year during the time I had been there. We generally made regular round-ups twice a year; sometimes we would work between that if we had to gather fat cattle or anything like that or brand. The regular round-ups were in the spring and fall. I recollect a round-up in 1889 and in 1888 and in 1887. I was not running the outfit in 1887 and 1888. Mr. D. G. Franks was running it. I run the outfit after Franks left. I think I was acquainted with all the cattle brands in that country. I think it was in 1890 that I first saw the X bar X brand, as well as I remember. I saw some cattle there that
69 was brought in there and turned loose in the lower part of that range. They were scattered around in the country. I must have seen forty or fifty, maybe more, maybe less. No X bar X cattle appeared in that range before 1890 that I know of, and I think if they had been in the range I would have seen them. Our range was on the Pecos and down to the Rio Grande until that pasture was put in there the last two years. I have not been in that pasture the last two years. For four or five years I was familiar with this immediate range down to the mouth of the Pecos river.

On cross-examination witness testified:

There are frequent crossings on the Rio Grande above and below the mouth of the Pecos river, crossing at which cattle could be drove across. I have never seen them crossing both ways. I have driven them across, but have never seen them across on their own

accord. I have worked right along on the other side close to the river. Our range fronts on the Rio Grande. We have no enclosed pasture at all on the Rio Grande; it is an open range. By the wagon road it is fifty-seven or fifty-eight miles from our ranch to the mouth of the Pecos; it might be a little further than that, but somewhere along about that.

D. G. FRANKS, a witness for the Government, testified as follows:

I had charge of the Pecos Land & Cattle Company's ranch at Dryden from 1885 until 1890. The headquarters of that ranch are at Dryden, Texas. I am now inspector for the Cattle Raisers' Association of Texas, and have been since the first day of March, last year. The cattle of the Pecos Land & Cattle Co. ranged from the mouth of the Pecos up to Dryden, about seventy miles up
70 and down the Rio Grande. We made two general round-ups every year, spring and fall. John Doak is her- attending court. He worked with me. John Doak worked under me five years. I think I know all the brands on that range from the Pecos up to Dryden. I say I know them all, because I claim to be a cowman and worked in the range and had supervision of all the work done in that range. The X bar X brand is in that range. I am not positive when it appeared, but I think it appeared in 1888 or 1889. I never seen a great many cattle in that brand. I seen some cattle in it that had other brands on them. I am not positive of but two other brands, scissors with half circle over it and the square and compass. I never seen the straight X bar X brand in that range up to 1890. In 1887, 1888, or 1889 it appeared, with other brands, but I never saw the straight X bar X in that range up to 1890. I don't think there could have been any considerable number of cattle in that range in the X bar X brand. I worked all over the range. In May, 1890, after the spring round-ups, I quit the country. I won't say that the half circle scissors and the square and compass were the only brands I saw with the X bar X, but those were the principal brands. I never seen any young cattle in the X bar X up to 1890. I never hunted below the mouth of the Pecos. The Pecos runs into the Rio Grande on the north side. Between the Rio Grande and the Pecos there is no stream until you get to Independence, on the Pecos. I know where the bridge is over the Pecos right near the mouth of it. I believe they say that bridge is 331 feet high. I don't know for sure that we ever lost any cattle across the Rio Grande or not. I have seen the Rio Grande cattle come across the river into our range; just a few; maybe in a round-up you would see a dozen head, or, maybe, twenty head. I don't know how they had got across. I remember of a good deal of excitement about the seizure about the first of April last year at Langtry and from that on to the 15th of May. I was there on the 15th day of May last year. I seen some cattle in the pen that the authorities had seized.
71 There were seventy-six head in the pen, I think. I have been working with cattle ever since I was able to ride. I

examined those cattle; could not undertake to tell every cow that was there; of course, I don't remember that; but there was cattle there in the X bar X brand and what I call the screw-plate brand, which belongs to Mr. McCormick. I examined them, but I don't know what quantity were in the X bar X brand. A good number of them were in the X bar X brand. There was no other older brand on them. Some of the ears of those X bar X cattle had been cut, it seemed to me. The ears had been changed from the original mark. The original mark, I suppose, was the under half crop. The mark, as attempted to be changed, was a crop. I seen as many as four head in that fix—three cows and one steer, I believe, five or six years old. I knew G. W. Simmons & Co. at that time. I knew their mark and brand. I had never been on their range. I do not know exactly where their ranch is; it is in Mexico; that is all I know. Mr. Cunningham was in charge of the cattle there at Langtry. He is deputy collector of customs at that port. I was there that time and again on the 27th of May. There were cattle there on the 27th of May. I think there was 116 or 118 head. There were X bar X cattle. Forty head of them were cut out to themselves. I saw that forty head. They were in the X bar X brand straight and under half crop in the left ear. I have been to Langtry since that, but not on that business.

On cross-examination witness testified:

I didn't see any of those cattle gathered. I don't know where they were gathered. It is a fact that the X bar X brand was the new brand on the cattle that I saw on the range in 1887, 1888, or 1889. We take that as the holding brand. The X bar X was the holding brand when I first saw these cattle. They were all grown cattle when I first saw the brand on them on the range. I don't think they were all steer cattle. I think
72 they were part she cattle. I think some of them might have had calves following them. I didn't see the calves, but the square and compass brand, according to my understanding, was what they were branded. I went with every round-up that went out while I was in charge of that ranch. We worked from ten to fifteen men. We worked on the open range. What I mean by a round-up is this: In the spring and fall we would take our wagon and men and went out and rounded up cattle every day; we would start out in the morning and we would work until we got a herd of cattle together, and then we would stop and brand the calves. A man would go in the herd and rope a calf and drag it out to the fire and they would put the brand on, and we kept a tally of those calves, and we did that from day to day. We changed about with the men that ran the branding irons and those who did the flanking; it is customary for one man to keep tally. The man who throws the rope is the man who halloos out the brand, whether male or female, and the man who is keeping tally puts down the brand that the other man halloos out. When we were working we worked everybody's cattle. If the roper halloos out D I F calf he thinks it is a D I F cow, and the tallyman puts it down that way.

We did not keep any tally of males and females. Usually one man will keep the tally all the time, so as to keep the number correct and everything of that sort so as tell what has been done at the end of the work. We worked down towards the mouth of the Pecos and may be we would work up twenty-five miles. We did not work up on the Independence creek; we usually sent men to work with the Independence crowd and bring our cattle back. Our cattle would go up there. The cattle would drift in different directions. We worked all between the Rio Grande and the Pecos, wherever there was water and the cattle went. There are places where they can get water for a few days at a time; that scatters
73 the cattle, but we wait for them to get together. They sometimes go in a direction opposite to which we think they ought to go. That bridge I spoke about is about three miles from the mouth of the Pecos. I am speaking of high bridges. If any one has said it was eight or ten miles he might be mistaken. I never measured it, but, according to my judgment, he would be mistaken. As I told you, I never measured it. I have never been right up the river; I have been on the outside. The Rio Grande has about the same course after it passes the mouth of the Pecos as it has this side. Right due south of Langtry the Rio Grande trends a little towards the railroad track first, then it turns right back and runs south. I don't think it runs as much as ten miles, but eight or ten miles. Two or three miles from the bridge they are both close together and turn off again and come together again. I have been on the range since I have been inspector for the Cattle Raisers' Association, but not to work to amount to anything at all. We have found cattle that belonged on the other side of the river on this side. We have gone over and crossed cattle from the other side to this side. I never seen any cattle crossing. I have seen cattle on the other side that I knew belonged on this side. (Witness explains from the map the location of the range of the Pecos Land & Cattle Co.)

JOHN DOAK, recalled on behalf of the Government, testified as follows:

As well as I remember the X bar X brand was found in our range in 1890. I don't remember ever seeing any there until 1890. The cattle had other brands on them. From 1890 on there were calves branded in the X bar X brand. Before 1890 the bulk of those in the X bar X had the half circle scissors on them also.

74 T. A. CUNNINGHAM was recalled on behalf of the Government and testified as follows:

There were no forty head of horned cattle, before the 4th of April, 1893, brought into the United States through the port of Langtry from Mexico. I was deputy collector at that port. Twelve head of horned cattle branded X bar on the side and X on the thigh never passed through there from Mexico, legally or illegally. The next port of entry below there is Del Rio, about sixty-eight miles below.

The next port of entry above me is about 230 or 240 miles on an air line, about 300 by the river. The eight head of cattle branded X bar on the side and X on the thigh, with half under crop in the left ear, did not pass through the port of Langtry. I found these forty head of cattle in Val Verde county, Texas. I know the old line of Kinney county. I helped to survey the line of Edwards county, north of Kinney. No; I don't know the old line; I only know it since Val Verde county has been made. I think Val Verde county is made out of a part of Crockett county; I am not certain about that. The seizure was made up the Rio Grande, above the Devil's river, on an air line about forty-eight miles above the mouth of the Devil's river. Prosecutions followed these several seizures against Mr. Reagan for about 75 or 76 head. Prosecution followed the seizure of the forty head. I remember the twelve-head seizure; that was about the 11th or 12th or 15th of May. I remember the 15-head seizure; that was about the 11th of May. I remember the eight-head seizure; that was along about the first of May some time. In those seizures there were other cattle besides X bar X cattle, but these X bar X cattle were among the seizures. Mr. Reagan claimed the first seizure of forty head; in fact, he claimed them all. He claimed the first seizure and put in papers to that effect; I mean Mr. Jim Reagan, the defendant. He said the twelve-head seizure was his, and he claimed the eight head, and he claimed the fifteen head. When they were crossing the river Mr. Dewees said
75 he could *rpove* seventeen head of them, I believe, and I ask him to designate them and he would not do it. Mr. Reagan, the defendant, was there. Mr. Reagan claimed all of them just as any other man would claim his stock; said he would not swear to all of them. The first forty head were held from about the 4th of April to some time along about the 24th or 25th of May. Reagan claimed them. He put in a written claim and gave bond. It was reported to the district attorney. I don't know whether the libel was filed here or not. I received it and sent it up here. The marshal had an order from this court and they were taken from my possession. The defendant didn't put in a written claim for the other seizures, but he claimed them as his cattle. These other seizures were steers and cows and two-year-olds, a couple of yearlings, and the rest of them were two-year-olds. I did not make any seizure of cattle under two or three years old unless they were following their mothers and identified by their mothers. So far as the Anderson seizure was concerned, they were reported to me by others. When I first made this seizure I telegraphed to Brown, the clerk, to know the date of the record of Reagan's mark and brand and I didn't seize any that would antedate that record as regards the ages. I didn't seize any calf that must have been dropped after that record. I found that record of a crop off the left ear to exist at the time of the seizure, and for that reason I didn't seize any calves that must have been dropped after that record. In the other seizures of the twelve, fifteen, and eight head I examined some of their ears. I found some of them crop in the left and some of them under half crop. In going down towards Reagan's pasture I come

in contact with a brown two or three year-old steer and we throwed him down and examined him and he had a crop in the left ear, but showed it had been an under half crop and showed it was changed. Fred. Smart roped the steer and throwed it down and examined it.

76 That was about three-quarters of a mile below Langtry; the fence of the pasture was down and he was roped outside of the pasture. The pasture fence seemed to be all broken down. Langtry is not in Reagan's pasture. It commences about half a mile below Langtry, at the bridge on a tributary of the Rio Grande. That pasture is about ten or eleven miles long and from nothing to two miles and a half wide; it is kind of a pocket along the railroad. The railroad fence forms the pasture fence and the bridges and gates are wired. There were two or three outside of that one we throwed down that I know their ears had been changed. The under half crop part of the ear was older and blacker and the hair was growing on it, and from there on up it didn't quite follow the line of the cut, and it was a white color and was not as old as the other part. That particular one and about two others had that appearance that convinced me it had been changed. I know Mr. Montell; he was inspector of cattle and hides shortly after that. I don't know exactly at that time whether he was or not. I think he was hide and animal inspector. I think I would be certain in saying he was deputy inspector. I saw him at Langtry about the time of these four seizures. He had a ranch there on the Pecos and lives at Langtry. When these cattle were taken back to Mexico Montell inspected them. He said he was the inspector, and I told him to go ahead and take*n* the marks and brands. That examination occurred in the pen at Langtry. There were present Sheriff Jones, Del Dewees, myself, Dock Anderson, and Dan. Franks examined them. That is not the forty head, that is the others. That was one seizure I had gathered and some that Choate and Dock Anderson had brought down. There were thirty-five or thirty-six head of them. There were 75 or 76 head that include these indictments, and there was other seizures after that. At the last term of court the clerk of Val Verde county was here. His name is George W. Brown. He had in his possession the records of marks and brands. I was

77 appointed on the committee to examine them, and did examine them. McCormick and Judge McKee acted with me in examining the book.

On cross-examination witness said:

I have not been affected in my office as deputy collector of customs by a change of administration in any way. I have been a surveyor and teacher of schools. I was a first-grade school teacher. I have been county and district clerk several years in my life, in Edwards county and in Menard county, Texas. I came from Louisiana to Texas. I came from below Baton Rouge. I was raised there below Baton Rouge, in the parish of Baton Rouge. I have lived in western Texas about twenty-eight years. I have been engaged in the stock business some little in Menard county and some little

in Edwards county. I found the first seizure of forty head in Reagan's possession. Reagan filed a claim bond for $250, with Billings and J. B. Toris as sureties. The other seizures I made I did not find the cattle in the possession of Reagan. They were on the range. I do not know of my own knowledge where the cattle were found that Dock Anderson gathered. I reported the seizure; but they were not found in his possession; they were found on the range. The reason I seized those other cattle besides the forty head was because of information I had in regard to them. I had my information from Simmons, McCormick, and Judge McKee. The last seizure were made after affidavits were made. I made those seizures upon information from parties who claimed to be owners in Mexico. The names of the individuals are Cochran, Fred. Smart, McCormick, J. F. McKee, and a note that I had through Anderson, and then instructions from the special agent of the Treasury, R. M. Moore. I talked with him. He is now in San Antonio, I believe. I testified in this case before Mr. Gildea. I believe my deposition was reduced to writing there. Maybe I did say in that deposition that I seized the cattle upon information from Mr. Cochran and instructions from Col. Moore, the special agent of the Treasury.

78 If I signed it, I said it. There are other causes that made me seize them. Col. Moore was a special agent of the Treasury Department *then;* he is not now. I don't think there were any yearlings in any of the seizures except the first one of forty head; there was a yearling and a calf among the first bunch; I don't think there were any unless they were identified by their mothers; there was one or two, I think, that followed their mothers; then *their* were some I don't know whether they were over two years old or not that were there. There was seven or eight or nine that verged between one or two. Stockmen don't understand that a yearling is a calf a year old; they call it a long yearling until it gets to be two years old. There was a couple of long yearling- there identified by their mothers; I think they were two years old; some held that they were long yearlings and others held that they were two years old, but the appraisement that I held didn't designate them that way; they are all designated as two years old except two of them. I expect I did say in my deposition down there that there were not many yearlings among these cattle, not over six or seven head; I don't believe now there is more than that. I don't know how many two years old were in all, except the forty head. Very likely I said in that deposition that there were very few two-year olds. I can't tell how many three-year-olds there were in all except the forty head unless you allow me to refer to my book. There were not many four years old. In one of the seizure- after the first one I think there was one brown steer about five years old. I am not certain of that; I think he is five years old. You can't tell the age of a steer unless you throw him down and look at his teeth. I can't tell you what I said down there before the commissioner exactly; I can give you the substance of it, though. There were about two head that I would swear to their ears having been changed, outside of that first one I examined that was not

in that bunch at that time. That would make three in all.
79 There were no suspicions about them; it was a straight change. I don't know anything about any evidences on any of them of having been unlawfully introduced into the United States. That deposition was correctly taken down; it don't misrepresent anything. I lived in Edwards county and —— county about sixteen or eighteen years, and on the Rio Grande four years. I never measured the depth of the Rio Grande along about Langtry and Del Rio, and could not give a correct answer as to that. I have seen cattle voluntarily crossing the Rio Grande right above Langtry, and I have seen them crossing down there at Del Rio; on two occasions I have seen cattle crossing. I am not acquainted with the Simmons ranch in Mexico. I don't know that any of the cattle that were seized crossed the Rio Grande voluntarily. I don't know how they came into the United States. When I answered Judge Evans that these cattle had not crossed the river legally or illegally, that means lawfully. I don't know anything about them only when I saw them seized. Parties came and made affidavit that they were theirs, and I turned them over to them.

On redirect examination witness said:

I would like to explain to you that the first animal we examined was that two-year-old steer—Carl Kirchner, myself, Chasten and Fred. Smart—and we didn't examine this ear that I speak of now to show me I was right until after I had made that affidavit, until after I had made that deposition. A good many of them looked suspicious, but I was satisfied of three.

On recross-examination witness said:

These depositions were written out and signed by me on the 23rd day of May, 1893. I made the subsequent examination the day the cattle were all rounded up and crossed over the river. We crossed them back on the 27th; I think it was between the 25th and 27th of May; it was the next day after I came up from Del Rio. The question came up after I came up there to Langtry, and they asked me
80 to look at them more closely, and I did. I had made an examination before that, but was not quite satisfied. While I was gone to Del Rio the cattle were herded there by parties I had employed to take care of them. I don't know their names. They were Mexicans; first one and then another. I don't think Johnny Townsend was at that herd. I don't remember the Mexicans' names. I have their names on the vouchers. Mr. Simmons and McCormick paid the Mexicans. Sam. Simmons was not there. I heard he was at Del Rio, but I never saw him there. Lee Cochran was representing Simmons & Co. I don't remember whether he was at Del Rio at the time I came up to Langtry, between the taking of these depositions and the crossing over of the cattle. Lee Cochran was in Langtry off and on during the time the cattle were penned, but I can't tell you when. Between the 4th of April and the 15th of May he was there nearly all the time. I think McCor-

mick was there between the 23rd and the 27th of May; about the 25th, 26th, and 27th. Franks came up there about the 25th. I guess Lee Cochran was there about the same time. I am not certain. McCormick was there about the 15th and he was there about the 25th, 26th, and 27th of May.

J. F. McKEE, witness for the Government, testified as follows:

I am deputy collector for customs at Del Rio, Texas, and have held that position a little over three years. No cattle branded X bar and X bar X with under half crop in the left ear have been passed at Del Rio since I have been there. Eagle Pass is the next port of entry below me. It is a little over sixty miles. Langtry is the next port of entry above me. That is about seventy miles. The duty on grown cattle is ten dollars per head. That tariff went into effect on the 6th of February, 1880. There have been some cattle lawfully
81 introduced through the port of Del Rio since the passage of that bill; I suppose a few hundred. They were reimported, though. They did not pay duties. There has been a few calves imported there. The duty on cattle under one year old is two dollars. There has been a few brought over there and sold to the butchers. I think stock cattle on this side of the river are worth about seven dollars per head. I am not in the cattle business and I don't know exactly, but I think it is about that.

On cross-examination witness testified:

I did not specify any brands or marks of cattle that have been introduced through the port of Del Rio.

On redirect examination witness said:

These were cattle that had been exported from this country to Mexico and brought back and were not dutiable. A duty of two dollars per head was paid on the calves that were introduced.

On recross-examination witness said:

I don't think those calves were branded. They were not branded or marked either.

82 ALONZO FRANKS, witness for the defendant, testified as follows:

My name is Alonzo Franks and I lived at Dryden, Texas, prior to 1893. I had lived in that country and near there about eight years. Mr. Dan. Franks is my father. I was working stock in that country; in the cattle business. Dryden is west of Langtry about fifty-five miles; somewhere along there. I worked cattle in all that country around about Dryden; I worked below Dryden to the mouth of the Pecos and above Dryden. Independence creek is about fifty miles north of Dryden; I guess, maybe, a little east of north. We usually speak of it as "up." Dryden is about twenty-five miles from the Rio Grande. To go to Independence creek by the way of Dryden it would be about seventy-five miles from the Rio Grande.

I worked up as far as Independence creek. I have worked west about fifty miles, I think. I have worked as far west as San Francisco creek and as far south as the Rio Grande. I worked mostly in general round-ups. Prior to 1890 I worked with the Pecos Land & Cattle Co. outfit. Prior to 1890 my father was man-ger for the Pecos Land & Cattle Co., but I don't remember what time he quit there. After my father ceased to be the man-ger Doak was running the outfit. I don't know anything about whether the Pecos Land & Cattle Co. is a partnership or a corporation. I know it is a company, and that they work stock there. I worked on that ranch until last year—until last fall. I have seen X bar X cattle on that range. I have seen them on the Pecos river mostly and above Langtry on the Rio Grande. I never saw them anywhere else only in that range. I went with Jim and Frank Reagan to hunt cattle up on the San Francisco creek west of Dryden; we gathered some cattle up there; some of them were unbranded. The X bar X brand was put on those cattle. I was only on one work up there. I think the San Francisco is in Buchel or Foley county. I think the points of Buchel and Foley counties come right down there together on the San Francisco; I am not sure. We brought those cattle down
83 near Langtry; that was in 1890. In traveling from the San Francisco country to Langtry, or near Langtry, we passed by Dryden. Dryden is a station on the railroads; it is the headquarters of the Pecos Land & Cattle Co. We went with the cattle within about twelve miles of Langtry; the place where we stopped is called Reagan water hole. We branded some cattle and turned them loose there. In going from the San Francisco down to the Reagan water hole we *ahd* a dim road. We were not on the railroad all the time; it was a wagon road. The Pecos river is wholly in Texas; it is not in Mexico. I never worked any east of the Pecos; I worked west of the Pecos. Independence creek is on the west side of the Pecos. I could not say how far Independence creek is above Langtry. I think it is about sixty or seventy miles. I don't know for certain. I first noticed the X bar X brand of cattle in that range in the spring of 1890. I think there were cattle there before that, but I don't remember seeing any until 1890. Mr. Jim Reagan, the defendant here, claimed that brand; of my own knowledge he claimed the brand in 1890. He claimed the brand in 1891 and 1892, and on up to the time that the seizure was made, about the first of April, 1893. I saw the forty-head of cattle after they were seized and were in the hands of the customs officers. I think I could identify some of those cattle independent of the mark and brand. I think I could identify about four head. Those that I recognized were some that we brought from the San Francisco. I was there at the Reagan water hole and helped to brand them. They were yearlings when we branded them in 1890; it was about the first of December, 1890. They would be three-year olds then in April, 1893. At the time we branded these animals we marked them with under half crop in the left ear. They were principally yearlings at that time; one was a two-year old in this bunch; that I recognized. I have seen calves

branded in that brand since that time on the range in round-
84 ups—at different round-ups. I saw some branded in the year
1891. I was working with Doak's outfit; there were calves branded in that brand every year. I do not know how many cattle there was upon that range, big, little, old, and young, branded X bar X. I think there were about two hundred; that is my judgment upon it. There is nothing to keep the cattle from drifting west of Dryden. Sometimes there is water out from the river and sometimes there is not. Cattle don't drift very much where there is no water, unless they are hunting water. The first time that I am sure of seeing X bar X cattle in that range was in 1890. I do not know of them being in there prior to that time. I have heard of the brand.

On cross-examination witness testified:

I don't remember now exactly when my father took charge of the outfit for the Pecos Land & Cattle Co. I am now twenty-four years old. I was less than twenty-one years old at that time. Mr. Reagan and I are very good friends. I have not been at or about his house a great deal. I have been to his father's house. I have been at my father's house at times in the last two years; at other times I have been off working. I have made my father's house my home since May, 1893; I call that my home. I have not staid there with him all the time. I have been down at the home of J. H. Reagan's father and his brothers and sisters since that time, but I never lived there. I have been to their house a good many times; not often. I am not related to the family, and do not think it is any of your business as to whether I expect to be soon. I have been with nearly every round-up of the Pecos Land & Cattle Co. for the six or seven years. I could not swear to seeing any X bar X cattle in that
range until the spring of 1890. Some of those cattle had other
85 brands upon them and some did not. Some had the scissors brand. The majority did not have the scissors as well as the X bar X. Some of those I saw in the spring of 1890 were of the bunch that they turned loose on the range in 1889 and some were not. There were some in the straight brand, but I could not say how many. I think there were fifteen or twenty anyway. Some of the cattle that we brought from up on the San Francisco did not have any mothers; they were mavericks. There were some mothers, and they were in different brands that belonged to the boys, the Reagan boys. We brought their mothers down also. When we brought them down to the Reagan water hole we turned them all loose there after we branded them. We did not put the X bar X on the mother cattle. We didn't put the X bar X on all the calves, but on the calves that didn't have any mothers—mavericks. I think we put the X bar X on about twenty of that sort. They were his cattle, I suppose. The mavericks we had there he had us put the X bar X on. I don't know where those cattle would go back to when turned loose. We got them up on the San Francisco; we carried them about sixty or sixty-five miles and turned them loose. Cattle that are drived out of their range and mavericks that are branded generally stay around where they are left. I think I am certain that

I made this trip that I am speaking of. I don't think we met but one man while we were up there. He did not own the mothers of those cows that we gathered up there. They did not belong to the Pecos Land & Cattle Co. We brought down 55 X B and Y O cows. I believe the Y O brand belongs to Frank Reagan, and fifty-five, I think, was the old man's Reagan's or Mrs. Reagan's, the boys' mother. I don't know which. I think Mr. Windsett had some. The reason they did not leave the mothers and just bring the calves was because they were bringing the cattle back from up there down towards Langtry. Some of these calves were running with their mothers. We put X bar X on the mavericks only. I don't think we put X bar X on any of the calves following their mothers. Some of the mavericks were yearlings and some twos and threes. I don't remember
86 how many were twos. I could not say exactly I can't say because I never counted them. The reason I didn't count them was because it was nothing to me. I think there were four or five twos in all. I think there were fifteen or eighteen year-olds. I don't know why they were moving their cattle down from that range, but I suppose it was because it was so far away from others. The name of the man we saw on this trip was Fields. I testified here at the last term of court. I was not at Langtry when they were seized. I was there—I don't know how long afterwards. I don't know when they were seized. I don't remember now why I was down there. I lived about fifty miles away from there. I don't know what date it was, but I was there when the river guards and whoever had charge of the cattle crossed them back to Mexico there at Langtry. I don't know what the date was. I think it was April. I don't know what number of cattle were crossing the river. They told me there were forty head in this seizure, but I don't know what seizure. I say that I was at Langtry when they were crossing seized cattle from this side to the other side, and among those cattle I recognized certain cattle. I heard Mr. Cunningham and different men talking about there being forty head. The cattle that I identified were in the bunch that they were crossing over. I seen the bunch of cattle that they said were the forty head. Cunningham and Anderson and people at Langtry said it was the forty head. When I got to see them they were not in the pen; they were taking them down to the river; I got close to them. The cattle we brought from the San Francisco they were crossing when I was down there. I think that was the 28th of April, 1893. I am not sure. I don't know all the men who were driving them. There was quite a crowd there that day. I didn't go from Dryden down there. I think we had just got back from San Angelo. I went on one trip up to San Angelo. We took some cattle to San Angelo. I came down from Dryden and overtook them over on the Pecos. Mr. Reagan hired me. I don't know whether the cattle they were crossing when I went down there
87 were seized before we left or after we left. They were taking them back to Mexico when I got back. I could not tell whether it was the 13th or 14th or 15th or 16th of May, when I got

back down there. I don't know whether Lon Tatum was there the day I saw them crossing the cattle or not. I don't know whether Frank Reagan was there or not. Frank Reagan and Lon Tatum went on this trip to San Angelo. I came back with them to their house, and after we came back I went out with them and saw some cattle going across the river. That was the only forty head that I had heard of. I don't know what seizure it was. The cattle I identified were the cattle that were being crossed over the river when we first got back from that trip. I testified in this case last court. Of those I recognized and identified three of them were steers. I am the same Alonzo Franks that testified here last court. I recognized more than one animal; I think I described four here last court. I recognized one—I recognized one—I recognized more than one. If I recognized four, I recognized one. I swore at the last term of court that I recognized four; three of them were steers. I described the four in my testimony before. I don't think I swore before that "I recognized one particular steer as being the same as one two-year old; I branded him and have not seen him since." I say that I recognized four head in all. I described three steers and I may have described that one as well as the others. I was all around the bunch that they were taking back across the river; I rode around the bunch; was around the bunch two or three times. After they were down at the river the bunch was stopped. I went down to the river and looked them over. I saw the cattle pass over. On that trip up there on the San Francisco, both Jim and Frank Reagan were with me; Jim left us after we got to Dryden and went to Langtry.

On redirect examination witness testified:

I now reside in Tampico, Mexico. I am working for the railroad company there. I left the United States last November. I
88 saw Jim Reagan at Del Rio when I left to go to Mexico. I have not seen him since the evening I got to Del Rio. I came here this time after the court opened. I saw Jim Reagan there the evening he started up here, and I saw Frank Reagan the evening before I got there. My first work in Mexico was at Tampico. I am working at the shops there. I *in*dentified four head of those cattle that were crossing the river; if I *in*dentified four head, I must have *in*dentified three; then if I identified three, I *in*dentified two, and if I *in*dentified two, I *in*dentified one. I thought Judge Evans meant by his question that I said I *in*dentified just one steer, but I *in*dentified more than that.

On recross-examination witness testified—

When I got back to Texas I got off the train at Del Rio as Jim Reagan got on it to come up here. I met him at Del Rio on my way back from Mexico. I came straight from Del Rio here without stopping; I didn't stop on the road between here and Del Rio.

On redirect examination witness testified—

Jim Reagan got on the train at the depot in Del Rio as I got off of it. I stopped with my father in Del Rio; my father lives there.

On recross-examination witness testified—

I went to see my father; he was at home one or two days while I was there; I visited my mother and family.

OSCAR DE MONTELL, witness for the defendant, testified as follows:

My name is Oscar De Montell, and in April, 1893, and prior to that time I resided at Langtry, Val Verde county, Texas. I was deputy inspector of hides and animals for Val Verde county. That is under the State law. I am acquainted with the range around Langtry. I am acquainted with the stock that had been on the range at that time. I had seen X bar X cattle in that range. I don't remember how long I had been living right there at Langtry.

89 I have had a camp on the Pecos river, near Langtry, since 1885. I was at Del Rio at the time these cattle were seized at Langtry; they held the cattle there and had them there when I got back. I don't remember how long it was before I came back. I inspected one bunch of cattle that went across to Mexico. I expect I had seen some of those cattle that I inspected there, which were *were* in charge of the Goverment officers, on the range there; but I could not identify any particular animals. I had seen that mark and brand on the range there. I don't remember how long, but I branded calves in the spring of 1890 in the X bar X brand. I branded calves in the X bar X brand in nearly every work after that—after the spring of 1890. I am not related to the defendant. I have been hide and animal inspector there at Langtry for nearly two years. Jim Reagan claimed that X bar X brand. My duties as hide and animal inspector required me to inspect all cattle that were being driven or shipped out of the country, and I had to put the brands on record. There is a book kept for that purpose at the court-house at Del Rio. The railroad company will not receive cattle for shipment that have not been inspected by the inspector of hides and animals; there must be a certificate with the cattle. I inspect all cattle that leave on the trail from my portion of the country west of the Pecos. I only inspected one bunch for these Mexico people who took cattle away from there. I am not certain, but I think there was about seventy-five head in that bunch. They were taken into Mexico. Jas. H. Reagan sold a bunch—I think it was in 1892—to John Henning. I didn't inspect that bunch. He is the same one that used to live at Del Rio. He received the cattle for Linheim & Co., I think. Linheim & Co. were merchants at Del Rio. I didn't inspect them, but I was there when the cattle were turned in and helped to brand them. I think there were forty head of X bar X cattle in that bunch that I inspected which went into Mexico, as well as I remember now.

90 On cross-examination witness testified:

I think I remember my testimony I gave here last court. In the round-up in 1890 I was along with Mr. Doak; that was in the spring, May or June; I don't remember what month. We branded two calves on that trip in X bar X. Those were the first calves that I remember being branded in that brand in that part of the country. I don't know that I had ever before seen the X bar X brand there at Langtry. We didn't mark those two calves at all because we didn't know what mark went on them. On that round-up we commenced working at the —— cañon and worked down to the mouth of the Pecos, including Langtry. Jim Reagan was not living at Langtry then. I was with the round-ups in 1891 and 1892. I don't remember whether we branded any calves with the X bar X in 1891 or not. We branded calves nearly every round-up in the X bar X brand. The reason we put X bar X on the calves I suppose was because the cows had it. The cows may have had X bar X on them and other brands on them, too, and still we might not know what the mark was that went with the X bar X. A good many times they will put the mark of the cow on the calf, but we did't mark those two calves. I was at Del Rio in April, 1893, when Jim and Frank Reagan and Lon Tatum were about to start out with a herd that they had sold up at San Angelo. I was at Del Rio when they got ready to start, attending court, on the jury. They had not at that time called upon me to make an inspection of those cattle. They hadn't got ready to start. I think Toris is a deputy inspector at Langtry, too. I think he was. He was just before that, I know. These cattle ought to have been inspected before they left the county. I did not inspect them. I was not called upon to inspect them. I don't remember what time I got home from attending court at Del Rio; it was after court broke up at Del Rio. They still had those cattle they had seized there at Langtry. I don't think there had been any second or third seizure when I got back. They brought several bunches in after I got home. I expect I did have

91 a conversation about that time with Deputy Collector Cunningham about those cattle. I don't know whether I had a conversation with Cunningham in which I said something to Mr. Cunningham—with Ed. McCormick. If I had any conversation with Ed. McCormick I can't say. I don't remember that I had a conversation, and Cunningham said, "Let's go to McCormick and you say just what you say to me." I had several conversations with Mr. Cunningham. We had several talks about these cattle and I do not recollect what particular conversation you refer to. I don't remember whether I had several conversations with Mr. Cunningham about these cattle when Mr. Ed. McCormick was there at Langtry. I may have spoken to Mr. McCormick and Mr. Cunningham at the same time. I didn't say to Deputy Collector Cunningham that these forty head were a new importation. He asked me if I knew these cattle, and I said I didn't know them. I told him I did not know the forty head. I may have gone with him to Mr.

Ed. McCormick. If McCormick asked me the question I certainly told him that I didn't know the cattle, because I didn't know the cattle. I knew the brand, but I did not know the cattle. I don't know that I went to McCormick and made that statement to him. Mr. Cunningham asked me if I knew the cattle and I told him I didn't. I didn't tell him that they were a new importation. I could not identify the cattle. I did not know them only by the brand. I knew the brand and that was all. I don't think I said anything about the brand in that conversation. I think I was camped on the Pecos in the winter of 1889–'90. In the winter of 1889–'90 there was a bunch of cattle turned loose above Langtry there with X bar X on them and some had V E on them. I don't remember seeing any before that time, but I do remember seeing that bunch. Reagan's cattle were a good ways above me. The old cattle had a double brand on them. The cows had half circle scissors, and some X bar X and V E. I think that was in 1890; it may have been before that. I could not tell, because we branded calves there in the spring of 1890. I could not say as to the date that those cattle came into our range, because I don't know.

92 It might have been in 1889; it was some time either in the winter of 1889 or very early in 1890. I don't know who brought them up there. I seen the cattle on the range in 1890. It was near Langtry that we branded those two calves in the spring 1890. We may have branded them both in one round-up, but it seems to me that we branded the two calves in two seperate round-ups. We made one round-up about a mile from the town of Langtry and one right at Langtry, and I think one of these X bar X calves was in each round-up. I have marked some that were branded in the X bar X with the crop and some with the under half crop. I don't remember the date that I made that inspection of the cattle that went into Mexico. I don't remember how long it was after I came back from Del Rio. It was some time in May, I think, that I inspected them. The cattle were in the hands of the customs officers. I was asked by the inspector to inspect them. I know Sheriff Jones, and he is now here under rule. He was there. I don't know whether he inspected the cattle or not, but I think he did. I inspected the cattle myself and made a list of them and sent it in to Mr. ——, the inspector. There were some cattle thrown down and examined. I think we throwed two head down because we could not see the brands; the brands were very dim. Cattle were not thrown down to see the mark the day we inspected. I think the evening I come back from Del Rio they penned a bunch of cattle at Judge Bean's just between sundown and dark and roped one animal in there and examined its ears. I was present, and I think it was the same evening I got back from Del Rio. I think there were 75 head in the whole bunch; may not have been that many. That was before I inspected. They had been seized and put in that pen for the night. I don't remember of but one animal being thrown that evening that I got there. I don't remember whether it was a cow or steer. It seems to me that it was a steer. Several of us looked at its ears. It was

marked a crop and under half crop in the left ear. I don't
93 remember, but I think the crop and under half crop were
the same age. I don't think the mark had been changed.
The list that I made at the inspection is on the record in Del Rio.
After this they had a bunch of cattle there, in which there was an
animal that I knew belonged to Mr. Reagan, because I helped to
brand it, and it ran there at Langtry. I asked Mr. Cunningham if
he had seized that animal and he said he had. I told him it was
Reagan's. He said he was going to turn it loose, but I don't know
whether he did or not. I don't remember when that was. That
steer was marked with a crop in the left year. Reagan has got
some cattle marked with a crop and some in the under half crop.
I have marked calves in both kinds. I don't know that J. H.
Reagan was using both marks that way, but I have marked them
both ways. I happened to be marking in the round-up and I sup-
posed that was the proper mark. I don't remember when I learned
what the proper mark was. The under half crop was the proper
mark. I don't remember who first told me that the crop was not
the right mark. The first calves that I marked in the X bar X
brand I put the crop in the left ear. I had never seen the record
of our county.

On redirect examination witness testified :

About the time these cattle were seized was the first time I ever
heard of the X bar X brand in Mexico. Reagan had been running
it, to my knowledge, on this side of the river since 1890. I know
that brand has been given there publicly by Jim Reagan since
1890, but I don't know in regard to the ear-mark. My camp on
the Pecos was about eight miles from Langtry. I don't remember
when was the first round-up west of the Pecos after December, 1889,
but I think there were two works in the spring of 1890. I
think the earliest one was in March; the latest one in May
or June. I know that Sheriff Jones was there at Langtry
94 when those cattle were crossed back to Mexico, because we
came up together from Del Rio. Cattlemen identify their
cattle by the brand. When I said that I could not identify the
cattle I meant that I could not identify any particular animal in
the bunch. I knew all those cattle by their brand and knew that
the brand belonged to Jim Reagan. I had never heard of Reagan's
title to those cattle being questioned by parties living in Mexico or
elsewhere until those cattle were seized. Those cattle ranged all
the way from the mouth of the Pecos up as far as I have ever
worked. I have never worked up any further than Gettis (?). I
could not say how far west they have ranged, but I have found
cattle on the Rio Grande all along up to the mouth of Meyer's
cañon. They ranged as stock ordinarily do on open range. I
didn't inspect the bunch of cattle that were delivered up in Tom
Green county about the time of the first seizure. I don't know that
Mr. Toris inspected those cattle, but he was a deputy inspector
there. I think he was at Langtry while I was at court. He has a
store there and lives there. When the Reagan boys were holding

those cattle there at Langtry they watered them right there at Langtry in the Rio Grande. I know where the depot is at Langtry and I know where Toris' store is. When they were holding these cattle in herd before they were ready to drive them up the country they held them above the railroad at Langtry. When they took them to water they had to take them back by Toris' store; that would be about two or three hundred yards from the town of Langtry. There are buildings on both sides of the railroad. They
95 had to go right along within two or three hundred yards of the depot. When the Reagan boys and Lon Tatum were holding that herd there near Langtry I don't know where they camped. I suppose they staid at home; they lived right there at Langtry. They generally penned the cattle where there are two cañons come together. There is a bluff all the way round, so they cannot get out.

On recross-examination witness testified:

Reagan had a pasture between the railroad and the Rio Grande. The railroad fence made part of it. The part up towards Langtry was closed part of the time; sometimes the cattle would break it down and get out. It was a wire fence. It was about a mile from that fence up to Langtry. The Rio Grande is the only place they could get water, and they had to go by the town. I have seen cattle of Reagan's in that pasture before this round-up. That pasture runs along the Rio Grande for several miles, and then they run a fence from the railroad to the river. This pasture is the land lying between the railroad fence and the river. The railroad is fenced, but not the Rio Grande. There is a fence along the railroad, but none along the bank of the river. Cattle coming from the other side could land in their pasture. There is nothing but the river there, and there is a few trails where cattle can come up and down on each side. You can ford the river anywhere along there at Langtry when the river is down. Down below Langtry cattle coming across from the other side might come into Toris' pasture or Reagan's pasture; it depends upon where they cross the river. Reagan's pasture borders on the Rio Grande along there for several miles. Before I went to Del Rio to court I helped to gather some of these cattle with Pachingham's outfit. We gathered all
96 our cattle; a good many of us boys got up an outfit and gathered our own cattle. We gathered to sell. I didn't sell them, but I sold afterwards. I don't remember when, what date, I quit work to go to attend court. I staid down there at court about two weeks. Before I went down to court I had put some of my cattle and Reagan's and Lom Tatum's in that pasture. I was holding my steers to sell, but didn't sell then. I was present when Reagan made a sale of cattle in 1892. The cattle were delivered at the mouth of Howard creek, about a mile from the Pecos river. I don't know whether he sold any of the X bar X cattle or not. I was there and helped to value them. I don't remember what brands were sold. I remember some of the brands. There were 55, V E, S X, S X L. I had a few head in there. I don't remember whether there

was any X bar X in there; there may have been. Jim Reagan owned the X bar X at that time; he claimed it. I don't think Lee Reagan owned the X bar X cattle in 1892. I always understood that Jim Reagan owned them. I never heard of Lee owning the X bar X cattle at any time or place.

JAMES LEVINGSTON, witness for defendant, testified as follows:

My name is James Levingston, and I live in Pecos county, Texas. I live, you might say, in the eastern part of the county. I know where the G., H. & S. A. railroad runs. I live something over one hundred miles north of that railroad. I am engaged in the cow business, and have been working cattle for the last eleven years. I know where Independence creek is. It must be nearly forty miles from the G., H. & S. A. railroad to Independence creek, and maybe
97 further. I never rode across there. I just approximate that distance. It is about fifty miles from Independence creek up to my place. I don't pretend to state the exact distance. I work cattle myself on the range there. There have been X bar cattle up there ever since I have been there. I have seen X bar X cattle. I saw cattle in the X bar X brand last year—1893. I saw cattle in that brand and with the ear-mark under half crop in the left ear in 1892. The first time I ever noticed any cattle in that X bar X brand in that part of the country down near Langtry I think was in 1890 or 1891. I don't remember now whether it was the fall of 1890 or the spring of 1891. I used to work down as far a- Langtry. I used to have cattle down there and worked down there. When we first located there there was some X bar cattle there, and that was in the summer of 1883; that brand was behind the shoulder blade, on the side. I saw cattle there in that brand in 1884 and in 1885. Last summer I was down on Independence creek, on a work, and Mr. Hozier, the owner of the ranch and bossman there, had to go to Stockton to court, and they turned me over their outfit to run it above there branding calves, and I had a good many cattle down there and worked up to these wells. There were two men from Mexico over there getting these Mexican cattle, which they claimed belonged in Mexico. At one of these wells in the round-up we had a red cow that had X bar on her and a little tally brand on her, and was marked a crop in the left ear and belonged to—I don't know who own the cattle now. It is known in that country as the T X outfit. These boys cut the cow, and I told them that the cow belonged to this outfit. They cut her, notwithstanding, and took her down
98 to Independence. This T X outfit had a ranch on what is called Horsehead crossing, on the Pecos; away up on the Pecos. This cow belonged to that outfit up there. The reason I made that declaration was that I had seen the cattle with this brand on them and the mark; they had this tally br-nd. I knew that tally brand. I have been in the cow business quite awhile, and drove on the trail several years. I have handled cattle a great deal. If I had been on a ranch of five or six thousand head of cattle for

several years it would be very few cattle that I would undertake to identify by flesh-marks independent of mark and brand; there might be some old cow or something with a peculiar mark that I could identify or one that had been milked. The way I tell our cattle is by the mark and brand, and it would be very few that I would be able to identify independent of the mark and brand. There may be some few that I could identify. In branding cattle on a round-up the man that was branding might put the brand on and make the brand peculiar in some way, so that he would afterwards identify the brand. Then, having the animal right under his foot, he might also notice the peculiarities of the animal as to flesh-marks. In branding cattle on a round-up one man does the branding and another man keeps tally. The man who keeps tally generally stays off a little, out of the way, maybe forty or fifty feet or something like that. J. M. Levingston and I are brothers. We are no relation to the defendant. Down in the country towards Langtry I have done most of the work myself. My brother Morgan has not been down in there but a few times.

On cross-examination witness testified:

99 I could not state as to the numbers of X bar X cattle I saw in 1890 or 1891. I saw a few scattering head. They had no other brand that I remember except the X bar X. Some of them were grown cattle and some of them were young cows and calves. I identified that cow by the mark and brand only; had never seen her before. I don't know where she is now or what became of her. The number of cattle that a man can recognize out of a given herd depends upon a good many facts—depends upon his association with the cattle—depends upon the time that elapses between the time he has seen them and the time that he sees them again. I should think a man's memory would wear out in the cow business. I have been at Langtry, and I know the defendant. I used to work around in that country. I have worked all over the country and had no stationed place to work. I staid down there a winter or two with Henry Packingham; that was in 1890 or 1891 and 1892, I think. I never saw the cattle that were seized while they had them seized; when they had possession of them. I don't know what cattle this litigation is about.

On redirect examination witness testified:

I have got between three and four thousand head of cattle.

J. M. Livingston, witness for defendant, testified as follows:

My name is J. M. Livingston, and I live in Pecos county, Texas; I am engaged in the cattle business, and have been engaged in it eleven years. I know the defendant, Jas. H. Reagan. I am not related to him. I have lived in Pecos county about ten years; have been engaged in the stock business there. I never was in Langtry only in passing through on the train. I know

about where it is. My ranch is north of Langtry, but
100 I don't know how far it is; I guess it is about one hundred and fifty miles. I have never been to Dryden. My place is north of Dryden. I have been on the range much around about my place. We have general round-ups about twice a year, in the spring and fall. I have been in those round-ups within the last two, three, or four years. In general round-ups we generally commence at Independence ranch. I know where the G., H. & S. A. railroad is; it runs by Langtry and Dryden. I have seen cattle in X bar X brand between the G., H. & S. A. railroad and my ranch. I don't remember when I first saw them. I have seen X bar X cattle there in our range. Between the Southern Pacific track and our ranch and up towards Independence creek I have seen X bar cattle. I have seen them up there about my range. As to the particular parts of the range I have seen them, I have seen them east of Stockton, on a little creek there, in the eastern part of the country and southeastern part. I could not say whether I have seen them on the Pecos or not. Cattle drift a good piece on an open range. They drift in all directions. I don't know whether you would call it drifting or not. They scatter in all directions. I have worked down as far as Independence creek, and have worked below there. I think I worked down within twenty miles of Langtry. I have seen X bar X cattle down as far as I have worked. I have seen cattle in that country north of the Southern Pacific track in the X bar brand. I don't know how many I have noticed. There is a ranch up there that gives the X bar brand. They have a good many cattle on the Pecos. Their headquarters is about thirty-five or forty miles from the Pecos river; it is southwest of Midland, I believe; that would be northeast of
Fort Stockton. I never saw any X bar cattle seized by Gov-
101 er-ment officers in that country. I don't remember seeing any after they were seized. This X bar brand was on the left side. The mark was crop in the left ear; no mark on the right.

On cross-examination witness testified:

I don't remember when I first saw the X bar X brand on our range, but I guess it was about three years ago. I don't know who owns the X bar X brand up there. The Independence creek goes into the Pecos. Within the last three years I have seen cattle in the X bar X brand. I don't remember how many I have seen. I don't think I have seen over three or four; maybe half a dozen. I don't remember whether they were old or young. Two years ago, I think, I saw some of them and one year ago.

JAMES H. REAGAN, the defendant, in his own behalf testified as follows:

My name is J. H. Reagan, and I am the defendant in this case. That paper is a bill of sale from me to Lee Reagan. The date of it is October 15, 1892. Lee Reagan is my brother. I never delivered

those cattle to Lee Reagan. The reason I made that bill of sale was that I was on a note in Del Rio of Mrs. Garden's, the note amounting to four or five hundred dollars, and I was on it as security and Mr. Carter, attorney-at-law, was about to sue me. I owed Lee some money, and I knew if I transferred them to Lee it would keep them from jumping on those cattle. The note was to Mr. Broadbent. Mr. H. C. Tardy was also on it as security. I saw Mr. Carter about the note and fixed it up with him to get him to put it off. I made this bill of sale to protect my brother. I fixed that up with Mr. Carter by giv-
102 ing him my note. That indebtedness to Mr. Broadbent has been paid. I paid part of it. My brother has never claimed to own any of the cattle transferred by that bill of sale. I made a trade with Ed. and Bladen Ramsey to sell them some cattle. Linheim & Co. put in a claim that they had a mortgage on the cattle and broke up the trade. The Ramseys did not pay me cash for the cattle, but gave me a note, and I took a mortgage on the cattle I sold them and other cattle they had to secure the payment of the note. When Linheim broke up the trade we declared the trade off and I gave Ramsey back his note. I don't know whether he gave back the bill of sale or not, but I gave him back the note. That paper is a copy of the note. I suppose that paper there is a copy of the bill of sale. Mr. H. C. Carter drew that document for me. I had previously given a mortgage to Linheim & Co., but I did not think the mortgage of Linheim & Co. covered these X bar X cattle at all. I hadn't intended for it to cover them at all. I tried to get Linheim to take up that $900 of Ramsey's and credit me with it and release the X bar X cattle, but he refused to do it, and that broke up the trade. These cattle had never been delivered to Ramsey. From that time on up to the present time Ramsey has never asserted any claim to those cattle. I made the trade with Mr. Dewees for that scissors brand of cattle. I got them from Mrs. George, but I made the trade with Mr. Dewees. Mr. Dewees was acting for Mrs. George. I did not pay for them all. Mrs. George is now my wife. At the time I bought the cattle she was a widow. I married Mrs. George in October, 1890. That was nearly a year after I bought the scissors brand. I have not kept up the scissors brand. I kept up the X bar X
103 brand. My ear-mark was under half crop on the left. I was to give Mrs. George six dollars around for the scissors cattle. It was a range delivery; a lot of them were in a pasture Mr. Dewees had leased, and a lot of them were up there, and I went up there and gathered them myself. In April, 1890, I was ranching up above Del Rio, but my people lived in Del Rio. I did not go to the clerk's office myself and have that brand and mark put on record; I wrote down to John or Lee, one or the other, to have it done. I got word to them some way or other. I was keeping up the under half crop on the left at that time. X bar on the side and X on the thigh and under half crop on the left ear was my brand and mark. I put that brand and mark on record. Nobody has made an adverse claim to those X bar X cattle in that country up there where

they have been running since I turned those scissors cattle loose there in 1889 except myself. I have worked those cattle on the range just like anybody else does in the spring and fall round-ups. Prior to the time these cattle were seized nobody had asserted any claim to the X bar X cattle in that country except myself. Prior to the time — these seizures I didn't know of anybody anywhere else owning X bar X cattle until about two weeks before the first seizure. Mr. Pat. Rose and Mr. Sutherland were over here from the other side working with us in gathering some of those cattle, and they told me that that brand and mark was given in Mexico. I think that was about two weeks before the first seizure; we were on the round-up gathering cattle. I do not know where Simmons' ranch is in Mexico. I have no knowledge of any X bar X cattle ever having been unlawfully introduced into the United States. I never heard of anything of that sort before this seizure. I know Mr. Harry Emerick. At the time I sold those cattle to Ramsey I think he lived up on the Pecos; I
104 don't know. He did have a ranch about three or four miles from Lozier. Lozier is on the Southern Pacific railroad. It is between Langtry and Dryden. I made a contract to deliver some cattle to Mr. Emerick. Tatum and I made the trade. I made the trade for the whole family of us. Father and Frank always put cattle in when I made a trade. I made a trade to deliver so many cattle. I expected to get these cattle on the range—mine and Tatum's and my father's and mother's and Frank's. I did not go over to San Angelo with those cattle. I staid there at Langtry. I think Cunningham wrote out that claim of mine. Joe Jones wrote out a claim for me, but I think I put in Cunningham's. I am not certain about who wrote that. I know that Joe Jones was not up there at Langtry. I claimed my cattle by the mark and brand. There was no dispute at all about the number of the cattle that they took there the first time. S O S was my wife's brand, and that is the reason I claimed that calf in that brand. We were coming by the water one day and roped the calf and tied it and branded it S O S. The calf was following an X bar X cow.

On cross-examination witness testified:

I don't know exactly who branded the first cattle in the X bar X brand; whether I branded them or some of the boys branded them. That was the bunch that was brought up above the Pecos. We put the X bar X on calves and on grown cattle. I think there was sixty or seventy cows put in that brand; maybe more. That was in the spring of 1890. The sixty or seventy head of grown cows had scissors and M A Y on them. In 1890 there was a bunch of young cattle that had no other brand on them brought from up the country. I don't know exactly how
105 many there was, twenty or twenty-five, I guess. In 1890 we branded all the calves that were following X bar X cows; the same in the year 1892 and the spring of 1893. There was not anything but some yearlings branded in 1889; twenty or twenty-

five, something like that. About seventy cows were branded in the spring of 1890, and about twenty or twenty-five yearlings that were unbranded were brought from up above in 1890. That would make about ninety-five or one hundred; somewhere along there, I guess. In 1891 there was calves branded that were following the cows. Everybody was branding a few. I could not say how many there was. In 1891 I should have had over one hundred. I could not tell how many I should have had in 1892. I don't think they would have amounted to 150 in 1891. They increased a good deal in 1892; they would go near about to two hundred. In the spring of 1893 I ought to have had 250 or 300. I was not there when they made the inspection of the forty head of cattle. I had stock taken away from me with X bar on the side and X on the thigh, with under half crop in the left ear. There were forty head taken, and I suppose those eighteen steers mentioned in that inspection list were taken. I didn't take any memorandum of them. I think all the forty head had under half crop. I had those forty head in possession when they were taken away from me. They were taken away from me by the seizing officer. I conveyed all my X bar X cattle to Bladen Ramsey in 1891 and made a bill of sale and put it on record, and I guess it is on record today. I believe I did make a bill of sale of the X bar X cattle to my brother Lee in October, 1892. When I executed that paper I think I gave it to Lee,
but I don't know what Lee done with it. I think I acknowl-
106 edged the bill of sale. I don't know as I left it with the
clerk. I don't know whether I left it with the clerk or Lee taken it. I could not tell when it was recorded or when it was filed for record. I did not turn the cattle over to my brother. I guess that is a bogus bill of sale. He did not pay me the money mentioned in the bill of sale. As I said before, I was on a security note there and was about to be sued, and I was afraid they would jump on those cattle, so I put them in Lee's name, as I owed him some money and wanted to secure him. It was partly to secure my brother. I never bothered about the bill of sale any more. The note has been paid. Those cattle might have been in Lee's name at the time of the seizure, but they were my cattle. He never claimed the cattle. That bill of sale was put on record, and I have never put on record any other paper cancelling it. I never put that on record. I think it was acknowledged before Joe Jones. I could not tell you whether I filed it in the clerk's office. I can't tell you because I don't recollect. It was recorded in September, 1893; that would be just before the last term of court. No, sir; I did not put that bill of sale on record to defeat this indictment. In September, 1893, I think I was under bonds binding me to appear before the honorable United States district court here to answer for the smuggling of the X bar X cattle. I never recorded that bill of sale. Lee Reagan is my younger brother. He is twenty-one or twenty-two years old. That paper on record would show that Lee Reagan owned all the X bar X cattle in that section of the country. The record shows it upon its face. I did, in October, 1892, execute that bill of sale for the X bar X cattle to my younger brother, Lee Reagan. I have told

what I did it for. I could not tell you who recorded that paper.
107 I think I turned that paper over to my brother Lee. I don't know for certain whether I turned it over to him or whether he took it to the clerk's office or whether I took it. Neither of us had it recorded. We never had it recorded after this trouble came up. The clerk is a good man. No, sir; I did not have that recorded to defeat the prosecutions in this case by showing that Lee owned the cattle at the date they were seized. I deny that I put that mark and brand on in 1890. I went to the office in 1892 and found that it was on record in that way. I think I used the brand one or two years before I discovered the mistake. I knew my brand because I knew what I was keeping up. I say that it was a mistake in putting it on record in that way. I didn't intend to adopt the mark of a smooth crop. My brand is the same as the Simmons brand. I think that brand and mark was on record two years before I discovered the mistake. I know I had it changed. In 1892 I went to the office and had the same brand recorded with the under half crop. I think Lee put that first brand and mark on record. I wrote to John or Lee. He made a mistake in putting it on record. I don't know whether I wrote it out on paper or sent him word. I may have sent him word to record it. Lon Tatum did not put it on. I think Lee Reagan put it on. When those cattle were brought up there in 1889 I don't know who did the branding. I went along and helped to brand the cattle. In 1889 we branded fifteen or twenty or twenty-five calves, and we branded the sixty or seventy cows in the spring of 1890. I bought the scissors cattle and the M A Y cattle and wanted to put on my brand. That is the reason why I put the X bar X on grown-up cattle. I wanted to keep up the X bar X brand and wanted to put all my cattle in my brand. I had
108 to tally these cows that I was getting. I had to brand them some way to keep tally. We gathered those cattle about seven miles below the mouth of the Pecos. It is about one hundred miles down to Del Rio, where Lon Tatum gathered the cattle to bring them up above the Pecos. The cattle were taken above Langtry. The cows were branded right there at Del Rio in 1890; that bunch was not with the Lon Tatum bunch at all. I never put any of the Lon Tatum bunch in the X bar X; we put some calves in it. In 1891 I was indebted to Linheim & Co. in the sum of fifteen hundred dollars, bearing interest; it was secured by a mortgage. I don't know exactly when I took that mortgage up; maybe it was August 11, 1892. I suppose it was August 11, 1892, as the release says so. I sold cattle to pay off the mortgage. I sold cattle at $6.50 or $7.00 per head and on up to $14.00 per head. These cattle were delivered to John Henning. I delivered the cattle to them at San Angelo; they received them though at the mouth of Howard creek; that is about thirty miles northeast of Langtry. I gathered those cattle on the range in Pecos and Val Verde counties, between 1891 and 1892. I did not sell all my steers. I sold steers in payment of the debt; don't believe there were any cows turned in. I think there were three head of the X bar X brand. I paid the debt of $1,500 off between 1891 and 1892

out of mine and my father's stock, and gathered them around about Langtry. I paid off the debt all in one drove. I think I delivered that drove in May, 1892; 1891 or 1892; I forget which. I had a good many steers left; X bar X steers. We were all working together getting up the steers necessary to pay off the Linheim mortgage. I left the X bar X cattle out, because part of this money I owed was money that my father owed and I gathered out of the V E brand and scissors. It was my name and note and my
109 property that was morgaged. I ran the business and mortgaged them to suit myself. In gathering the stock I would throw out the X bar X cattle. It was not because they belonged to Bladen and Ed Ramsey; it was not because they belonged to my brother. It was because I didn't want to take them. I left out a good many steers. I sent out all ages of steers in paying off the Linheim debt; some twos and yearlings. I was indicted in Val Verde county at the court before the last three times. I was indicted and arrested before that. I was indicted several times; I don't know how many. I was indicted twice for murder, and twice, I believe, for horse-stealing. The three last times were for bringing cattle into the United States; I don't believe it says where from. I was on the witness stand in my own behalf here six months ago. I said that I learned of the X bar X brand being in Mexico about two or three weeks before the seizure. I found it out by Mr. Rose and Mr. Sutherland telling me. They saw my cattle there and told me that brand was given on the other side of the river. I did not say they hallooed across and told me. They cam- over to this side and worked about a month with us. It was Pat Rose. I guess Pat Rose stays over on the other side. I could not tell you how many Rose brothers there are without counting them; four or five brothers of them, I think. Jim Rose is here. I summoned him here and he is under the rule. We were working right at Langtry when they came over. I did not hire them. If they brought any cattle from the other side with them I never seen them. They came over to gather their cattle. I think they worked with us about twenty or twenty-five days; near on to a month. I could not tell you how far
it is over to their ranch; I have never been to their ranch.
110 Their range comes right down to the river next to mine. From Langtry on down cattle can be brought across from the other side; they can cross the stream there anywhere. The river was very low and they could cross from the other side and come into my pasture without hindrance. The Rose people have headquarters or a home down at Del Rio. I live in that village. I live there now, but at the time of this seizure I lived at Langtry. I have been acquainted with the Roses a good many years. They had cattle on the other side of the river and on this side of the river; I don't know where the- cross. For the last five or six years I have been well acquainted with the Rose boys, and they have had a stock of cattle on the other side of the river. When I met them I talked "cow" with them occasionally.

On redirect examination witness testified—

I don't recollect the months that those bills of indictment were found against me down there at Del Rio. It was while the last court was going on here; while I was up here at court. I think I know part of the witnesses who are against me—Mr. McCormick, Lee Cochran, Fisher, and Cunningham. I have never been tried on those indictment- for murder and horse theft. The indictments were found several years ago. I could not tell you when. The indictments were throwed out; they are not pending. The cases that are pending at Del Rio are virtually the same cases that are in this court.

STATE OF TEXAS, }
County of El Paso. }

I, Geo. R. Harvey, official stenographer of the El Paso division of the district court of the United States for the western district of Texas, do hereby certify that the above and foregoing is a
111 true narrative of the testimony of the witnesses therein named and is substantially the testimony given by said witnesses in the trial of the above styled and numbered cause at the April term of said court, 1894.

(Signed) GEO. R. HARVEY,
Official Stenographer.

(Copy.)

Certificate of Registration of Marks and Brands.

No.	Name of owner	Place of residence.	Mark.	Brand	Location of brand.	Date of registration.		
						Month.	Day.	Year.
545.	J. H. Reagan.....	Val Verde county, Texas.		×— ×|	Left side..... Left thigh...	April...	16.....	1890

THE STATE OF TEXAS, }
County of Val Verde. }

I, —— ——, clerk of the county court in and for said county, do hereby certify that the foregoing is a true copy of the record of the mark and brand of J. H. Reagan as entered in the Record of Marks and Brands of said county, in vol. I, page 136.

Given under my hand and seal of office this 9th day of October, A. D. 1893.

[SEAL.] G. W. BROWN,
Clerk County Court, Val Verde County.

Endorsed: Filed Oct. 25, 1893. D. H. Hart, cl'k, by Warner A. Gibbs, dep.

(Copy.)

Certificate of Registration of Marks and Brands.

No.	Name of owner.	Place of residence	Mark.	Brand.	Location of brand.	Date of registration.		
						Month.	Day.	Year.
685	J. H. Reagan.....	Val Verde county, Texas.		X -- X	Left side..... Left thigh..	June...	2nd...	1892

112 THE STATE OF TEXAS, }
County of Val Verde. }

I, G. W. Brown, clerk of the county court in and for said county, do hereby certify that the foregoing is a true copy of the record of the mark and brand of J. H. Reagan as entered in the Record of of Marks and Brands of said county, in vol. I, page 171.

Given under my hand and seal of office this 9th day of October, A. D. 1893.

G. W. BROWN,

[SEAL.] *Clerk County Court, Val Verde County.*

Endorsed: Filed Oct. 25, 1893. D. H. Hart, cl'k, by Warner A. Gibbs, dep.

THE STATE OF TEXAS, }
County of Val Verde. }

Know all men by these presents, that I, J. H. Reagan of the aforesaid county and State, for and in consideration of the sum of nine hundred (900) dollars, to me in hand paid by Ed. and Bladen Ramsey, the receipt of which is hereby acknowledged, have bargained, sold and delivered, and by these presents do bargain, sell and deliver unto the said Ed. and Bladen Ramsey of Val Verde county, Texas all the following-described cattle, to wit: All cattle branded X — on side and X on the thigh, "range delivery," said cattle now ranging in Val Verde county, Texas.

To have and to hold all the above-mentioned cattle unto the said Ed. and Bladen Ramsey, their heirs and assigns, forever. And I do hereby bind myself, my heirs, administrators and executors, to warrant and forever defend unto the said Ed. and Bladen Ramsey, their heirs and assigns, all of the above-mentioned cattle, against the claims of all persons whomsoever.

Witness my hand this 6th day of July, A. D. 1891.

J. H. REAGAN.

THE STATE OF TEXAS, }
County of Val Verde. }

113 Before me, G. W. Brown, clerk of the court in and for Val Verde county, Texas, on this day personally appeared J. H. Reagan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this 6th day of July, 1891.

G. W. BROWN,
[L. S.] *Co. Clerk, V. V. County, Tex.*

Filed in my office for record this the 6th day of July, 1891, and recorded the 7th of July, 1891, at 10 o'clock a. m.

G. W. BROWN,
Co. Clerk, V. V. Co., Texas.

THE STATE OF TEXAS, }
Val Verde County. }

I, G. W. Brown, clerk of the county court in and for Val Verde county, Texas, do hereby certify that the foregoing instrument is a true copy of the original as it appears of record in Book No. 1, bill sale record, page 213, Val Verde county, Texas.

Given under my hand and seal of office this the 19th day of April, 1894.

G. W. BROWN,
[SEAL.] *Co. Clerk, Val Verde County, Texas.*

Endorsed: J. H. Reagan to Ed. Ramsey, Bladen Ramsey. X — X. 1891, July 6th. Filed Ap'l 25, 1894. D. H. Hart, clerk.

114 THE STATE OF TEXAS, }
Val Verde County. }

Know all men by these presents that I, James H. Reagan, of Val Verde county, Texas, for and in consideration of the sum of six hundred and twenty-five dollars to me in hand paid by Lee Reagan, the receipt of which is hereby acknowledged before the signing of this conveyance, have bargained, sold, and delivered to the said Lee Reagan, as the same now runs up the range in Val Verde and Pecos counties, the following-described cattle, viz., all cattle in the following brands: on the hip and side, also X — on the side and X on the thigh, and M A Y on the side and in all marks; and I hereby warrant the title to said cattle and forever bind myself to defend the title to the same unto the said Lee Reagan, his heirs and assigns, against all lawful claims whomsoever.

Witness my hand this the 15th day of October, A. D. 1892.

JAMES H. REAGAN.

THE STATE OF TEXAS, }
Val Verde County. }

Before me, Joseph Jones, a notary public in and for Val Verde county, on this day personally appeared James H. Reagan, known to me to be the person whose name is signed to the foregoing instrument of writing, and acknowledged to me that he had executed the same for the purpose and consideration therein expressed.

JOSEPH JONES,
[L. S.] *Notary Public, Val Verde Co., Tex.*

Filed in my office for record the first day of November, A.
115 D. 1892, at 9 o'clock a. m., and duly recorded the 4th day of Sept., A. D. 1893, at 10 o'clock a. m.

G. W. BROWN,
Co. Clk, Val Verde Co.

"NOTE."—The notary leaving out the attest and oath.

THE STATE OF TEXAS, }
Val Verde County. }

I, G. W. Brown, clerk of the county court in and for Val Verde county, Texas, do hereby certify that the foregoing is a true and correct copy of the bill of sale as appears of record in my office in Book No. 1, pages 264 & 265.

Attest my hand and seal of office this the 12th day of October, A. D. 1893.

G. W. BROWN,
[SEAL.] *Co. Clk, Val Verde County, Tex.*

Endorsed: J. H. Reagan to Lee Reagan. 15 day of Oct., 1892. X side, X thigh, ~~X~~ M A Y. Filed Ap'l 25, 1894. D. H. Hart, clerk.

No.	Date of reception. Mo.	Day.	Year.	H.	M.	A. M	P. M.	Name of mortgagor.	Name of mortgagee or trustee.	Name of *cestus que trust.*	Date of instrument. Mo.	Day.	Year.	Am't secured. Dollars.	Cts.	When due. Mo.	Day.	Year.	Property mortgaged.	Remarks.
416	April	3rd	1891	11	..	"	...	J. H. Reagan...	M. Neuwirth...	M. Neuwirth...	April	2nd	1891	1,500	00	May	1	1892	All my cattle branded VE on shoulder, about 700head; also all cattle branded XX XX on hip side; also all my cattle branded [illegible] on hip side; all my horses branded VE, ranging in Val Verde, Pecos, and adjoining counties. See mortgage for better description.	AUG. 11TH, 1892. This mortgage is this day settled in full. See the release on file this day. S. W. BROWN, *Clerk.*

THE STATE OF TEXAS, }
Val Verde County. }

I, S. W. Brown, clerk of the county court in and for Val Verde county, do hereby certify that I have made a careful examination of the records of Val Verde county and find the above mortgage, No. 416, is the only mortgage given by J. H. Reagan to M. Neuwirth at any time.

Given under my hand and seal of office, in Del Rio, this 12th day of April, A. D. 1894.

—— ——.

Endorsement: J. H. Reagan to Lindbrun. April 3d, 1891. XX, [illegible], "VE". Filed April 25th, 1894. D. H. Hart, clerk.

Louis Lindbrun & Co., merchants.

DEL RIO, *Aug. 11th*, 1892.

Mr. S. W. Brown, Co. clerk, Del Rio, Texas.

DEAR SIR: Please release the following mortgage: J. H. Reagan to M. Neuwirth, $1,500, given April 2nd, 1891; due May 1, '92.

Collect your fee from mortgagor.

Yours truly,

M. NEUWIRTH.

Filed 11th day of Aug., 1892.

S. M. BROWN, *C'k.*

THE STATE OF TEXAS, }
Val Verde County. }

I, S. W. Brown, clerk of the county court in & for Val Verde Co., do hereby certify that the foregoing is a true copy of the entry in Chattel Mortgage Register Book No. 1, p. 81, Val Verde Co., Tex.; also a true copy of the release now on file in this office.

Given under my hand & seal of office this 12th April, 1894.

S. W. BROWN,
Co. C'k, Val Verde Co., Tex.

THE STATE OF TEXAS, }
County of Val Verde. }

Know all men by these presents that we, Ed. and Bladen Ramsey, of the county of Val Verde and State of Texas, parties of the first part, for and in consideration of the sum of nine hundred dollars to us in hand paid by J. H. Reagan, of the county of Val Verde and State of Texas, the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents bargain and sell, unto the said J. H. Reagan, the party of the second part, the
116 following property, to wit:

All our cattle branded P L on hip and side and numbering at present about 250 head.

All our cattle branded X— on side and X on thigh, numbering at present about 125 head, together with all increase of said cattle, which said increase is to — placed in same brand as the animal from which the increase is derived, and both of said brands to be in all things faithfully "kept up;" said cattle now range in Val Verde county:

To have and to hold all and singular the said property unto J. H. Reagan, the said party of the second part, his heirs and assigns forever, and we, the said parties of the first part, for ourselves and our heirs, executors, and administrators do covenant with the said party of the second part, his heirs and assigns, that we are lawfully seized and possessed of said property in our own right; that the same is free from all incumbrances, and that we will and our heirs, executors, and administrators shall warrant and defend the same to the said parties of the second part, his heirs and assigns, against the lawful claims of any and all persons whomsoever.

This conveyance is made, however, upon the following conditions, to wit: That whereas we, the said parties of the first part, are justly indebted to the said party of the second part in the sum of nine hundred dollars, which indebtedness is evidenced by our certain promissory note, a copy of which is marked "Exhibit A," hereto attached and made a part hereof.

$900.00. DEL RIO, TEXAS, *July* 6, 1891.

117 On May 1, 1892, after date we or either of us, for value received, promise to pay to the order of J. H. Reagan the sum of nine hundred dollars, together with interest thereon at the rate of 12 per cent. per annum from date until paid.

And if default is made in the payment of this note or any part thereof, and the same is placed in the hands of an attorney for collection, we agree to pay an additional sum of 10 per cent. on the entire principal and interest hereof as a collection fee. This note is payable at Del Rio, Val Verde county, and is secured by a mortgage bearing even date herewith on about 375 head of cattle and their increase.

(Signed) ED. RAMSEY.
BLADEN RAMSEY.

(On margin:) Copy. Exhibit A.

Now, therefore, if we, the said Ed. and Bladen Ramsey, parties of the first part, or our heirs, executors, or administrators, shall well and truly pay to the said party of the second part or his heirs or assigns the aforesaid sum of money, with all legal interest and charges thereon accruing when the same become due and payable, then this instrument to be null and void and of no other force and effect; otherwise it remains in full force, effect, and virtue.

But should the possession above given and granted be made use of by the person in possession or any other person to injure or jeopardize the rights of the creditor aforesaid herein given, then it shall be lawful for such creditor or his heirs or assigns to take immediate possession of the said property and hold the same until the maturity of the debt herein secured and then proceed as herein set forth.

118 We, the parties of the first part, for ourselves, our heirs, executors, and administrators, do*th* covenant and agree to and with the said party of the second part, his heirs and assigns, that in case default is made in the payment of the sum of money above mentioned, then it shall and may be lawful for him, and the said parties of the first part do hereby authorize and empower the said party of the second part, his heirs and assigns, with the aid and assistance of any other person or persons, to enter our premises or any other place where the said property may be found and take and carry away the said property, and after ten days' notice, by posting written notices in three public places in Val Verde Co., to sell and dispose of the same at public or private sale for the best price he can obtain, and out of the money arising therefrom to retain and pay the said sum above mentioned and all charges touching the same, rendering the surplus (if any) unto us, the said parties of the first part, our heirs, executors, administrators, or assigns; and the said parties of the first part hereby ratifies and confirms any and all lawful acts of the said party of the second part, or those acting under his direction, in carrying out the powers herein conferred.

In witness whereof we, the said parties of the first part, have hereto set our signatures this the 6th day of July, 1891.

ED. RAMSEY.
BLADEN RAMSEY.

THE STATE OF TEXAS, }
County of Val Verde. }

Before me, G. W. Brown, cl'k of the county court in and for Val Verde county, Texas, on this day personally appeared
119 Ed. Ramsey and Bladen Ramsey, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 6th day of July, A. D. 1891.

[SEAL.]

G. W. BROWN,
Clerk V. V. Co., Tex.

Endorsed: No. 432. Ed. and Bladen Ramsey to J. H. Reagan. Chattel mortgage. Filed in my office for registration at 5 o'clock p. m. on the 6th day of July, 1891, and duly registered on the 6 day of July, 1891, in Book No. 1, page 84. Record of Chattel Mortgages of Val Verde county. G. W. Brown, clerk county court, V. V. county.

H. C. CARTER, witness for the defendant, testified as follows:

My name is H. C. Carter, and I live in Del Rio, Texas. I am a lawyer by profession at Del Rio, Texas. I believe I have resided there since 1887. I know the defendant in this case. I have known him more or less ever since I have been in Del Rio. I have done business for him off and on. I know a firm by the name of Lindheim & Co. in Del Rio. The firm is composed of Louis Lindheim and M. Newirth. I drew the original bill of sale from J. H. Reagan to Ed. and Bladen Ramsey, of which the paper in evidence is a certified copy. It is dated the 6th of July, 1891. I drew the chattel mortgage from Ed. and Bladen Ramsey to J. H. Reagan; the instrument in evidence is the one I drew. I see it is in my handwriting. The bill of sale is for certain cattle in consideration of nine hundred dollars, and the chattel mortgage secures the payment of the nine hundred dollars
120 by a mortgage on certain cattle. I drew both instruments. They bear the same date. At the time I drew these instruments I was retained attorney for Louis Lindheim & Co. When these instruments were drawn the defendant, Jim Reagan, was present, and either Bladen or Ed. Ramsey was there—I won't be positive which. These parties came into my office and requested me to draw up these instruments here. Mr. Reagan was to sign the bill of sale conveying the cattle mentioned herein, which I believe is X bar, to Ramsey in consideration of nine hundred dollars, and he was to retain a lien upon them to secure the payment of the nine hundred dollars—so this chattel mortgage was drawn. I knew that all of Mr. Reagan's cattle were mortgaged, and, as I was to act as counsel apparently for both parties, I thought it was nothing but right that I should tell Mr. Ramsey of the transaction. Mr. Reagan seemed to be surprised at the fact. I told him nevertheless it was true. He then went down and examined the records and found that the cattle were mortgaged just as I had said. He then insisted upon the instrument being drawn up, saying that he would fix it with Lindheim & Co., and that the transaction, I presumed, could be carried out, and I told him that I would draw the instruments at his dictation, but I wanted him to understand that I had previously drawn instruments conveying these cattle to some other parties. I then drew the papers. My advice to Lindheim & Co. was not to release anything that they had under mortgage to secure money due them. The mortgage that Lindheim & Co. had didn't describe the cattle by brands, but, as is my habit, I always take the brands that the parties give in, then include all other

cattle, no matter what brand they may bear or where
121 they may be found, and also all other cattle that may be acquired by the party; so that, in effect, mortgages the brand, whether it is mentioned therein or not. After I was up here at the last term of court (October, 1893), I went to Mr. Brown, the clerk of Val Verde county, and asked him for the original mortgage, and he stated that he didn't have it, that he had looked. I didn't search, but I was there while he was searching, and he stated that the original mortgage was not there, that he had been turning them over to the parties who called for them after they were paid. He didn't state to whom he turned it over. This paper in evidence is a transcript from the chattel-mortgage record. It is not a copy of the mortgage. This is an abstract of the mortgage that I drew up to secure Louis Lindheim & Co. in the sum of $1,500.00 on the cattle of J. H. Reagan. This mortgage was made to M. Newirth, a member of that firm, for the use of the firm. This abstract gives a description of the cattle, and also refers to the chattel mortgage, which is on file with the clerk. This abstract describes the cattle by certain brands, as the law requires a brief description of the property mentioned. It does not give the X bar X brand, because it was not named in the original mortgage. In this mortgage, which I drew up for Louis Lindheim & Co., after describing the various brands which Mr. Reagan gave in, one of which I remember very well being V E, I went on further in the description, and recited the fact that the mortgage covered all the cattle which the mortgagor owned, whether the brand was mentioned or not. The mortgage covered
all the cattle that Reagan owned. Reagan, as I understood
122 the transaction, thought that he had mortgaged the brands that were named in the mortgage. I don't know whether he read it or not, but it clearly covered all the property. Reagan denied that the X bar X brand was mortgaged until he went down and read over the mortgage. As I stated, they came upstairs again after looking at the mortgage, and Reagan said to me to prepare the papers and he would fix it with Lindheim. Lindheim came up and consulted with me, and I advised him to release nothing; to let the mortgage stand as it was until his money was paid. Lindheim & Co. have been paid.

On cross-examination the witness testified:

I had the clerk to look for the mortgage of Reagan to Lindheim & Co., but I did not hunt for it myself. I don't mean to say that the clerk has lost the papers. The description in the mortgage did not name the X bar X cattle.

STATE OF TEXAS, }
El Paso County. }

I, Geo. R. Harvey, as official stenographer of the United States district court for the western district of Texas, at El Paso, April term, 1894, do hereby certify that the foregoing copies of instruments introduced in evidence upon the trial of this cause are true and cor-

rect, and that the testimony of H. C. Carter is a substantially true and correct narrative of same.

(Signed) GEO. R. HARVEY,
Official Stenographer.

The foregoing statement is agreed to by the undersigned counsel for the United States and for James H. Reagan as containing
123 all the material evidence introduced on the trial of the above-entitled cause and all that is material to a proper understanding of the bills of exception and assignments of error contained in this transcript.

J. M. DEAN & F. B. SEXTON,
Counsel for Jas. Reagan.
R. U. CULBERSON,
U. S. Attorney for the Western District of Texas.

THE UNITED STATES } Nos. 791 A, 792, 798, and 794.
vs.
JAMES H. REAGAN. }

AT CHAMBERS.

Upon consideration of the application of defendant, James H. Reagan, who was convicted and sentenced at the recent October term of the United States district court for the western district of Texas, held at the El Paso division thereof, for an extension of time for docketing the case and filing the record thereof with the clerk of the Supreme Court of the United States—

It is ordered that the time be extended for such purposes for the period of sixty days from this date.

This order for enlargement of time will be duly entered of record by the clerk at the said El Paso division of this court.

Ordered at San Antonio this the 18th day of May, A. D. 1894.

T. S. MAXEY, *Judge.*

Endorsed: No. 791 A, 792, 793, and 794. In the district
124 court of the U. S. for the W. D. of Texas, El Paso div. U. S. *vs.* J. H. Reagan. Order of court made at chambers enlarging time for filing record, etc. Filed May 20, 1894. D. H. Hart, clerk, by Warner A. Gibbs, dep.

125 *Certificate.*

THE UNITED STATES OF AMERICA, } ss:
Western District of Texas, El Paso Division, }

I, D. H. Hart, clerk of the district court of the United States of America within and for the western district of Texas and the El Paso division thereof, do hereby certify that the foregoing pages of typewritten matter matter numbered from one (1) to one hundred and fifteen (115) one hundred and fifteen and one-half (115½) and one hundred and sixteen (116) to one hundred and twenty-four (124), is a true and correct transcript of the orders made and pro-

ceedings had in said district court at the April term, A. D. 1894, thereof, in a certain cause therein pending and bearing the consolidated numbers of seven hundred and ninety-one "A" (791), (said cause having been by order of court consolidated with causes numbered seven hundred and ninety-two (792), seven hundred and ninety-three (793) and seven hundred and ninety-four (794), and styled The United States *vs.* James H. Reagan, as will appear from the records of this office.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said district court, at office in the
126 city of El Paso, Texas, this the 21st day of June, Anno Domini one thousand eight hundred and ninety-four.

[The Seal of the U. S. District Court, Western Dist. Texas, El Paso.]

D. H. HART,
Clerk U. S. District Court, W. D. T.,
By WARNER A. GIBBS,
Deputy Clerk, El Paso, Texas.

[Endorsed:] No. 791 A. In district court of the United States for the west. dist. Tex., El Paso div. James H. Reagan, plaintiff in error, *vs.* The United States, defendant in error. Transcript. Applied for — delivered to F. B. Sexton, attorney-at-law.

Endorsed on cover: Case No. 15,639. W. Texas, D. C. U. S. Term No., 755. James H. Reagan, plaintiff in error, *vs.* The United States. Filed July 16th, 1894.

157-301

157-301

Office Supreme Court, U. S.
FILED.
FEB 14 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

JAMES H. REAGAN, Plaintiff in Error,
vs.
THE UNITED STATES.
No. 755.

In Error to the District Court of the United States for the Western District of Texas.

Plaintiff in error was convicted of violating section 3082 of the Revised Statutes U. S.; in other words, he was convicted of receiving and concealing cattle smuggled into the United States. (Rec., 2, indictment, and 6, verdict.) Motion for new trial was made and overruled (Rec., 7–11), and plaintiff in error was sentenced to two years of imprisonment in the Kings County penitentiary, New York. (Rec., 11.) The case comes here upon writ of error granted to plaintiff upon his application. (Rec., 16.) There are four assignments of error (Rec., 12), the first of which is as follows: "The court erred in refusing to allow to the defendant ten peremptory challenges to jurors, and in allowing the said defendant only three peremptory challenges to jurors summoned to try the said defendant in the above-entitled cause." To this ruling of the court an exception was allowed and noted (Rec., 14), and to this assignment of error we shall call the attention of the court first.

We submit that the offense with which the plaintiff in error was charged, and of which he was convicted, is a felony, and that by section 819, Rev. Stat., U. S., he was of right entitled to ten peremptory challenges to the jurors called to try him. "On the trial of any other felony the defendant shall be entitled to ten and the United States to three peremptory challenges." (Rev. Stat., U. S., sec. 819.)

Section 3082 makes receiving, buying or selling smuggled goods, knowing them to have been smuggled, an offense, without giving it a name, and punishes it by fine or imprisonment, or both. Our contention is that the punishment prescribed for the offense created by section 3082, makes that offense necessarily a felony. And the court will observe that the punishment inflicted upon plaintiff in error was confinement in the New York State penitentiary for two years. The question then is, "what is a felony as referred to by section 819 Rev. Stat. U. S.?

A full and complete answer to this question is: "In the absence of statutory definition, offenses are felonious which were such at common law."

State *v.* Dineen, 10 Minn., 407;
Ward *v.* People, 3 Hill (N. Y.), 395.

Congress has omitted to say in section 3082. under which plaintiff in error was convicted, whether or not the crime shall be a felonious one; therefore, under the above authorities, we must ascertain the nature of the crime—whether it be felonious or otherwise—by going to the common law.

See 1 Hare Am. C. L., 530, *et seq.*;
2 *Ib.*, 1120, *et seq.*;
Whart. C. L. (8th edn.), 253;
Rice *v.* Rd., 1 Bl., U. S., 358;
Ib., 459;
U. S. *v.* Barney, 5 Blatch., 294;
Spear. Fed. Judic., 683–4.

In the earliest history of the common law a felony was an offense punishable by forfeiture of lands or goods.

In progress of time punishment by forfeiture was suspended by imprisonment except in cases capital. Or, as Bouvier expresses it, "An offense which occasions a total forfeiture of either lands or goods, or both, at common law, to which capital or other punishment may be superadded, according to the degree of guilt. (*Bouv. L. Dict., Tit. Felony.*)

"A felony is a crime punishable, on conviction, with death or imprisonment in the State prison, or for the commission of which the perpetrator may be so punished." (4 Am. & Eng. Ency. of L., 651–3 a, Tit. Notice, and cases cited.)

The distinction between felonies and misdemeanors is rather by the consequences which follow the commission of the offense, from conviction, than by any particular element or ingredient of the offense itself. (*Ib.*)

And a discretion to assess a lesser punishment does not reduce the grade of the crime. (*Ib.*)

In effect, here is a statute which says, if you commit a certain offense, not describing, or rather not classifying the same, you must be punished by fine or imprisonment in a State penitentiary. Plaintiff in error was convicted of the violation of this law, and was sentenced to two years in the New York penitentiary. We submit, therefore, the crime for which he was tried and of which he was convicted was a felony, not being made such by statute, but by reference to the common law, under the rule of law above stated, and that on the trial, plaintiff in error should have been allowed ten instead of three peremptory challenges, under section 819, Rev. Stat., U. S.

We anticipate, here and now, the point that will be raised by the United States, one that might, from the attempted consolidation in the indictment of two distinct

and separate statutes, seem to be tenable, but which has no standing at all, as will be seen upon investigation.

Section 2865 is headed, "For issuing false invoice," and in italics this offense is the only one spoken of, and it is made a misdemeanor. But following comes a definition of smuggling, and this is also made a misdemeanor. It will be doubtless argued that smuggling, being made a misdemeanor in this statute, the offense of receiving and concealing smuggled goods spoken of in section 3082, though not classified as to the grade of crime, must necessarily be a misdemeanor, being no greater than the crime of smuggling.

Let us examine this question further. The indictment under which plaintiff in error was convicted reads as follows:

"*Indictment No. 791 A.*

"THE UNITED STATES OF AMERICA:

"In the Honorable United States District Court for the Western District of Texas, sitting at and in the City of El Paso, within said district, at its October Term, A. D. 1893.

"In the name and by the authority of the United States of America comes our grand jury of the United States of America and Western District of Texas and the El Paso division thereof, and, being first duly selected, tried, empannelled, and sworn and charged, upon their oaths in open court do present—

"That on the 4th day of April, A. D. 1893, and in the county of —— and Western District of Texas, and within the jurisdiction of this court, one James H. Reagan did unlawfully, fraudulently, wilfully, and knowingly and with intent to defraud the United States of America, receive into his possession and conceal forty head of horned cattle, a further description of which is impractical in this finding on account of length, but will be described on trial by proof, of the value of four hundred dollars, subject to duty, and which should have been invoiced; which said forty head of horned cattle had then and there been unlawfully, wilfully, and knowingly, and

with intent to defraud the United States revenues, smuggled and clandestinely introduced into the United States from the Republic of Mexico, by some person to the grand jury unknown, without paying or accounting for the duties by any one, he, the said James H. Reagan, then and there well knowing said forty head of cattle to have been smuggled, as aforesaid, contrary to the statute and against the peace and dignity of the United States of America. "NOYES RAND.

"*Foreman of the Grand Jury.*"

From this it will be seen, that the plaintiff in error was charged with, and subsequently convicted of, solely the offense of "receiving and concealing smuggled goods," under section 3082, which is headed, "concealing or buying goods liable to seizure." Though in the indictment are used words taken from section 2865, and not in section 3082, as "which should have been invoiced," and "without paying or accounting for the duty," etc. Now, after all, plaintiff in error was charged with and convicted of what? Why simply this, "*receiving and concealing smuggled goods*" contrary to section 3082 and not section 2865. These sections are separate and distinct, and can not be put together either for the purposes of indictment or from the consequences of the same—the conviction. Section 3082, passed March 2, 1799, relates to smuggling and receiving and concealing smuggled goods; section 2865, passed August 30, 1842, relates to issuing false invoice and smuggling. But it may be claimed the latter statute repeals by implication the former, wipes it out. This, we say, is not the law, even if these two sections contained the same language or named the same offenses, which is not so by any means.

Repeal by implication is not favored.

Endl. Int. Stat., sec. 210, and numerous cases cited; *Ex parte* Crow Dog, 109 U. S., 556.

This is especially so as to revenue laws.

Endl. (*sup.*), sec. 243, and cases cited.

And, too, the statute under which plaintiff in error was indicted relates to the "receiving and concealing of smuggled goods," calling it neither felony nor misdemeanor, whereas the statute of a later date—2865—relates to smuggling and especially to false invoice.

Had the later statute said anything at all about "receiving and concealing" smuggled goods, and then called the same a misdemeanor, there might have been some ground for arguing the first statute had been repealed; as it was, such was not the case. The absence, also, of any reference to the earlier act in the later is emphasized as negativing an intention to repeal, and there should be some notice taken of the former act to indicate an intention in the later to repeal it.

Silfred *v.* Com'th, 104 Pa. St., 179;
Mitchell *v.* Duncan, 7 Fla., 13.

We can not understand how the words, "or other felony," in section 819, Rev. Stat. U. S., can be held to mean anything than "or any other offense which is or may be punishable by imprisonment in the penitentiary."

Although we have found no case in which the precise question raised has been decided, we think it is substantially decided in Mackin *v.* U. S., 117 U. S., 348, and U. S. *v.* De Walt, 128 U. S., 393.

These cases hold that crimes punishable by imprisonment in a State penitentiary, with or without hard labor, are infamous crimes, which persons can only be held to answer on indictment or presentment by a grand jury. If there is any distinction between an infamous crime and a felony, it is so slight that we are unable to perceive it. Each is alike dependent upon the punishment for its definition. If a man can not be held to answer for an infamous crime unless charged by a grand jury, surely he can not be tried for a felony without being allowed the right of challenging as many jurors as the law allows him.

If the mere failure of Congress to say that the crime created by section 3082 of the Revised Statutes U. S. "is hereby declared to be a felony," at the same time that the punishment affixed to it is everywhere affixed to a felony makes it a misdemeanor, then the history of every case tried under that section presents the judicial absurdity of trying and convicting a man for a misdemeanor and punishing him for a felony. Can the law of Congress be tortured into such a meaning?

The plaintiff in error has certainly been deprived of an important right in this case to which he is entitled, and for this error of the court below a new trial should be granted. It is scarcely worth while, at this late day, to take time to cite authorities to the court, to show how sacred this right of challenge, especially in criminal cases, is regarded by the courts of the United States, and of the States as well. But quite a number of cases can be found in 12 Am. and Eng. Ency. of L., p. 343 (Tit. Challenges). See especially, *Lewis* v. *The United States*, *146 U. S., 370.*

II.

The second assignment of error complains of the comment of the trial judge on the testimony of the defendant, James H. Reagan. (Rec., 12.)

The comments of the trial judge on the testimony of the defendant were prejudicial to him. They, in effect, told the jury to disregard the testimony of the defendant. They referred to the defendant's right to testify as a privilege. He is made a competent witness by law, and there is no good reason for singling out his testimony and pointing to supposed weaknesses in it, and to his peculiar temptations to commit perjury. The law contemplates that the jury should treat his testimony like that of any other witness. (Hicks *v.* U. S., 150 U. S., 442.)

It is clear that this was a misuse by the court of the privilege given to the defendant under the law to testify. It was equivalent to criticising the defendant's statements because he did not criminate himself, and if this can be done the "statutory privilege becomes a snare and a danger." (Cooley, Con. Lim., (6 edn.,) 384–6 and notes.)

III.

The 4th, 5th, 6th, 7th, 8th, and 9th grounds in the defendant's motion for a new trial raise in different forms the sufficiency of the evidence to support the verdict. We think the evidence fails entirely to show that the cattle referred to were smuggled, and certainly fails to show any guilty knowledge on the part of the defendant.

And we think there is such a failure in this respect, that this court is at liberty to order the verdict to be set aside, for it does not rest on the weight of evidence, but on the entire absence of evidence.

In the 9th and 10th grounds in the motion for a new trial (Rec., 10), defendant complains of the effect of language used by the counsel who closed the case on behalf of the Government. It was unwarranted by the evidence, and works a great hardship on defendant, whose counsel could not reply. We think such comments should be controlled by the court.

Wilson *v.* U. S., 149 U. S., 63, and cases cited:
Hall's case, 150 *Ib.*, 76; Grave's case, *Ib.*, 118;
Starr's case, 153 *Ib.*, 14.

IV.

The fourth assignment of errors complains of an oral observation made by the trial judge to the jury, just as they were retiring. (Rec., 13.)

Such a comment was well calculated to impress the jury with the belief, that the trial judge desired the conviction of the defendant, though of course not so intended.

We think it was prejudicial to the defendant and should not have been made. This, in truth, is simply coercion of the jury: it was, in other words, a mandate from the judge to the jury to convict the defendant.

Green *v.* Telfair, 11 How. Pr. (N. Y.), 260;
Slater *v.* Meade, 53 *Ib.*, 57;
Phœnix Ins. Co. *v.* Ming, 81 Ala., 335;
Furshman *v.* Mohyor, 54 *Ib.*, 263;
State *v.* Ladd, 1 La. Ann., 271;
State *v.* Bybee, 17 Kan., 462;
Physioe *v.* Shoe, 75 Ga., 466;
Hancock *v.* Elam, 3 Baxt. (Tenn.), 33;
R. R. Co. *v.* Borlan, 88 *Ib.*, 537.

The presentation of the points of the complaint, in this trial, is not complete and perfect, and in this respect the Record is meagre. But the trial judge has signed bills of exceptions which are in the Record, that do show positively, he and the district attorney indulged in remarks prejudicial to the accused and erred, grossly erred, in so doing, and this court must, under the last part of paragraph of rule 35, "*notice these plain errors though not assigned.*" They are here of Record, and judicial eyes should not be closed upon them. This court has heretofore, in cases like this, involving life and liberty and character, ruled on the questions not duly and artistically presented, and we insist, if any case ever deserved this notice, this does; and this accords with the view of this court in *Lewis* v. *The United States, sup.*, in giving benefit to the accused of errors in the Record, though not specifically assigned.

It is quite evident, from the Record before the court, that Reagan did not have a fair and impartial trial under the law, and we most respectfully ask the case be reversed.

A. H. Garland,
For Plaintiff.